United States Court of Appeals
for the Second Circuit

APPENDIX

11/21

77-6107

United States Court of Appeals

For the Second Circuit

UNITED STATES COURT OF APPEALS
FILED
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A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

B

P/S

United States of America,
Plaintiff-Appellee,

—against—

Bertram L. Podell,
Defendant-Appellant.

APPENDIX

Daniel M. Shientag
Attorney for Defendant-Appellant
160 Broadway
New York, N. Y. 10038
(212) 267-0363

Honorable Robert B. Fiske, Jr.
United States Attorney for the
Southern District of New York
Attorney for Plaintiff-Appellee
United States Courthouse
Foley Square
New York, N. Y. 10007

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OFFICE	YR	NUMBER	MO.	DAY	YEAR	J	N/S	O	R	R 23	DEMAND $	OTHER	JUDGE NUMBER	JURY DEM.	YR.	DOCKET NUMBER
[illegible]-1	76	0509	01	30	[illegible]6	1	890	1			41		0860		76	0509

PLAINTIFFS

UNITED STATES OF AMERICA

DEFENDANTS Duffy, J.

PODELL, BERTRAM L.

9/21

CAUSE

Equitable relief 28 USC 1345

TW

ATTORNEYS

2 U.S.ATTY
1 St.Andrews Plaza NYC
J.L.Siegel,AUSA

DANIEL M. SHIENTAG
160 Broadway-NYC 10038 (267-0363-4)

☐ CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID DATE	RECEIPT NUMBER	C.D. NUMBER
	JAN 30 1976	[illegible]	

STATISTICAL CARDS

CARD	DATE MAILED
JS-5	x
JS-6	8-16-77

UNITED STATES DISTRICT COURT DOCKET

DC-111 (Rev. 1/7

2A 3A

76 Civ. 509 U.S.A. BERTRAM L. PODELL PG.2

Duffy, J.........

DATE	NR.	PROCEEDINGS
30-76	1	Filed complaint and issued summons.
-07-76	2	Filed summons with marshal's return served on Bertran Podell Shepard Hardy dtd 3/30/76 -- Bertram Podell by S.Hardy dtd 3/3076 Bertram Podell by G. Reine dtd 2/6/76.
-20-76	(3)	Filed Consent Order extending deft's time to answer to the complaint to 05-20-76. DUFFY, J. (D.M.S.)
-20-76	(4)	Filed ANSWER of deft. to the complaint. (D.M.S.)
6-07-76	(5)	Biled Amended ANSWER of deft. to the complaint.
-24-77	(6)	Filed pltff's annexed Rule 9(g) statement and notice of motion for an order granting pltff. summary judgment pursuant to Rule 56 FRCP.. RET. 3-8-77
-24-77	(7)	Filed memorandum of law in support of Governmnet's motion for summary judgment.
02-24-77	(8)	Filed Government's affdvt of Stepehen M. Weglian
02-24-77	(9)	Filed Government's affdvt. of Joseph Jaffe.
-05-77	(10)	Filed affdvt.of B.L.Podell dated ~~for~~ march 30,1977
-05-77	(11)	Filed defts memorandum of law in opposition to Govt's motion for summary judgmt.
-05-77	(12)	Filed defts statement pursuant to rule 9g
-19-77	(13)	Filed Pltff's reply memorandum in support of its motion for summary ju
5-31-77	(14)	Filed Opinion # 45965 and Order-- for the reasons stated, the government's motion for summary judgment is granted in the amount of $40,000. (being the amount sought by the government less the $ 1,350 referred to in footnote 4 supra) So ordered- DUFFY, J. (m/n)
-01-77	(15)	Filed deft's affdvt. and notice of motion for anoorder granting reargument of pltf motion for summary judgment.. RET. 7-12-77
7-01-77	(16)	Filed deft's memorandum of law in support of motion.
6-30-77	(17)	Filed deft's notice of appeal to USCA from the Order dated 5-31-77 gwhichng granted pltff. motion for summary judgment. Copy mailed to : U.S. Atty., S.D.N.Y. Ent. 7-1-77.
07-19-77	(18)	Filed pltff's memorandum of law in oppesition to deft's motion for reargument.
7-28-77	[illegible]	Filed memo endorsed on document # 15-- for the reasons stated, the within motion to reargue has been granted. Upon reconsideration, I adhere to my original decision. So ordered- DUFFY, J. (m/n)
8-03-77	(19)	Filed true copy of USCA stip & order that the appeal may be withdrawn without costs and without attys. fees and without prejudice to a renewal thereof on or before 9-23-77.
-16-~~88~~ 77	20	Filed judgment $ 78,021.. ordered that pltff have judgment against deft int the sum of $40,000.00 with 6% int. and costs to be taxed. Duffy J. Judgment ent. 8-17-77 Clerk m/n (on docket 8-17-77)
9-21-77	21	Filed AMENDED NOTICE OF APPEAL of deft to USCA 2nd Circuit from judgment filed 8-16-77 in favor of pltff and against deft etc. copy to U. S. Attorney.

JLS:rs
74-3298

4A

1-30-76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---x

UNITED STATES OF AMERICA, :

Plaintiff, :

-v- : **COMPLAINT**

BERTRAM L. PODELL, : 76 Civ. 509

Defendant. : KTD

---x

Plaintiff, United States of America, by its attorney, Thomas J. Cahill, United States Attorney for the Southern District of New York, for its complaint against the defendant, alleges as follows:

FIRST CLAIM FOR RELIEF

1. This is a civil action brought by plaintiff, the United States of America, for equitable relief. This Court has jurisdiction pursuant to Title 28, United States Code, Section 1345.

2. Defendant Bertram L. Podell (Podell) resides or may be found within the jurisdiction of this Court or is otherwise subject to its summons and process.

3. On February 28, 1968, Podell took the oath of office and thereafter served in the Congress of the United States as a member of the House of Representatives, representing the Thirteenth Congressional District of New York in the 90th through 93rd Congresses.

While serving in said capacity, as an elected member of the House of Representatives, Podell received the salary, badges, and emoluments of his public office and held a position of public trust, serving as a fiduciary and agent of plaintiff, the United States of America.

5. During the times relevant to this suit, Leasing Consultants, Inc., was a corporation engaged in the leasing and rental business, including the leasing of air-craft, and had an ownership or other possessory or financial interest in Florida Atlantic Airlines, Inc. Florida Atlantic Airlines, Inc., was a Florida business engaged in the operation of an air taxi service and had applied to the Civil Aeronautics Board for approval and designation as a regularly scheduled air service between Florida and Freeport, Grand Bahama Islands, which designation is called a route 9 designation. Consideration of Florida Atlantic Airlines, Inc.'s application and route 9 designation also required the participation of the Department of State and approval of the United Kingdom Board of Trade which is at least in part conditioned on the approval of the Government of the Bahamas Islands; the latter authority also having responsibility for the issuance of certain additional lending permits or licenses necessary to the operations of such an air service. Florida Atlantic Airlines, Inc., was also the subject of a proceeding before the Federal Aviation Administration and the National Air Transportation Safety Board regarding the possible revocation of its operating certificate.

6. During the relevant times, the Civil Aeronautics Board, the Federal Aviation Administration, the Department of State, and the National Air Transportation Safety Board were agencies and instrumentalities of plaintiff, charged and entrusted by plaintiff with the authority and responsibility to consider and determine matters affecting Florida Atlantic Airlines, Inc., and Leasing Consultants, Inc., and pending before said agencies, as previously alleged.

7. In or about December, 1968, and thereafter, defendant Podell conspired, agreed and colluded with officers, representatives and shareholders of Leasing Consultants, Inc., and Florida Atlantic Airlines, Inc., to defraud the plaintiff, to obstruct plaintiff's agencies and their legitimate operations and activities, to deprive plaintiff of the honest, unbiased, and unencumbered services of Podell a member of Congress, and to violate Title 18, United States Code, Sections 201 and 203, as alleged in Counts I and V of the indictment filed on July 12, 1973, in United States v. Bertram L. Podell and Martin Miller, No. 73 Cr.675, in the United States District Court for the Southern District of New York, which allegations are incorporated herein by reference.

8. Pursuant to and in furtherance of the aforesaid agreement and conspiracy, defendant Podell, while a member of the House of Representatives, used and exploited and attempted to use and exploit his official and representative capacity and position of public trust, and the respect and deference customarily accorded it and attempted to and did employ the badges, prestige, and prerequisities of his office in, at least, the following particulars:

(a) to obtain access to, and meetings with, officials of the Department of State, Civil Aeronautics Board, Federal Aviation Administration, and the Government of the Grand

Bahamas; (b) to obtain information and the informal views and opinions held by the officials referred to in the previous subparagraph; and, (c) to influence and cause the aforesaid agencies to act favorably and to the advantage of Leasing Consultants, Inc., and Florida Atlantic Airlines, Inc., concerning official and public matters then pending or under consideration, including those previously enumerated in paragraph 5, herein.

9. Pursuant to and in furtherance of the aforesaid agreement and conspiracy and in consideration and return for defendant Podell's conduct and official position, as alleged, Podell solicited, requested, accepted and received from Leasing Consultants, Inc., Florida Atlantic Airlines, Inc., their officers, representatives, or shareholders, payments, gratuities, and emoluments, either directly or as purported legal fees or campaign contributions, in the approximate amount of $41,350.

10. Upon information and belief, defendant Podell holds and retains the aforesaid payments, gratuities, or emoluments, or their proceeds, and has failed and refused to relinquish, surrender, remit or account for said sums or amounts to plaintiff and despite plaintiff's demand.

11. The foregoing considered, the defendant Podell has breached his fiduciary duty and violated the confidence, authority and trust reposed in him by plaintiff; and, by his conduct and exploitation of his official position and the conflict of interest which thereby occurred, plaintiff has been deprived of the honest, full, faithful and unencumbered services of its agent.

12. Defendant Podell is liable and accountable to plaintiff therefore.

JLS:cr
74-3293

SECOND CLAIM FOR RELIEF

13. Plaintiff repeats and realleges paragraphs two through ten of its First Cause of Action as fully as if herein set forth.

14. Defendant Podell has breached and violated a term and condition of his agency relationship and implied contract of employment and has been unjustly enriched by receiving monies or profits that rightfully belong to and must be paid or remitted to plaintiff.

15. Defendant has refused to pay plaintiff said amount and is liable to plaintiff therefore.

WHEREFORE, plaintiff demands an accounting from defendant Bertram L. Podell for the monies, profits, gratuities, or emoluments obtained or derived from the conduct and transactions complained of; and further, that this Court adjudge, impose, and impress upon the defendant, his assets and his property, a constructive trust or trust _ex maleficio_ for all such earnings, income, profits and emoluments and their proceeds, totalling $41,350, together with interest, for the use and benefit of plaintiff as beneficiary, and for such other relief as may be appropriate; and, plaintiff further demands a money judgment against the defendant Bertram L. Podell in the amount of $41,350, together with interest and cost and such other relief as may be appropriate.

THOMAS J. CAHILL
United States Attorney

By:________________________
JERRY L. SIEGEL
Assistant United States Attorney
Tel: (212) 791-1921

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	INDEX NO. 76 Civ. 509 KTD
- against -	:	
BERTRAM L. PODELL,	:	AMENDED ANSWER
Defendant.	:	

- X

Defendant, by his attorney, DANIEL M. SHIENTAG, for his Amended Answer to the plaintiff's Complaint herein, respectfully shows and alleges:

AS TO THE FIRST CLAIM FOR RELIEF

FIRST: Admits that on February 28, 1968, the defendant took an oath of office and thereafter served in the Congress of the United States as a Member of the House of Representatives representing the 13th Congressional District of New York in the 90th through 93rd Congresses and, except as specifically admitted herein denies each and every and all of the allegations set forth and contained in Paragraph "3" of the Complaint.

SECOND: Denies each and every and all of the allegations set forth and contained in Paragraphs "1", "5", "6", "7", "8", "9", "10", "11" and "12".

AS TO THE SECOND CLAIM FOR RELIEF

THIRD: Defendant repeats, reiterates and re-alleges each and every denial of each and every allegation, heretofore made herein, with respect to the matters set forth and contained in Paragraph "13" of the Complaint, with the same force and effect as if set forth at length herein.

FOURTH: Denies each and every allegation set forth and contained in Paragraphs "14" and "15" of the Complaint.

AS A FIRST AFFIRMATIVE AND COMPLETE DEFENSE

FIFTH: That the plaintiff's action, as to each and both claims for relief, was not commenced within the time limited therefor by the applicable Statute of Limitations.

WHEREFORE, the defendant demands judgment dismissing plaintiff's Complaint together with costs and disbursements.

/S/ DANIEL M. SHIENTAG
DANIEL M. SHIENTAG
Attorney for Defendant
Tel. (212) 267-0363

RJMcC:wp
02-1530

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA, :

Plaintiff, :

- v - :

BERTRAM L. PODELL, :

Defendant. :

- -x

NOTICE OF MOTION

76 Civ. 509 (KTD)

SIR :

PLEASE TAKE NOTICE, that upon the annexed statement submitted pursuant to Rule 9(g) of the Local Rules of this Court and the exhibits annexed thereto, upon the Affidavits of Stephen M. Weglian and Joseph Jaffe and the memorandum of law filed herewith, and upon all pleadings and proceedings had herein, the undersigned will move this Court before the Honorable Kevin T. Duffy, Room 905, United States Courthouse, Foley Square, New York, New York, at 2:15 P.M. on Tuesday, March 8, 1977, or as soon thereafter as counsel can be heard, for an order granting plaintiff summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and for such other and further relief as may be just.

The undersigned respectfully requests oral argument.

Dated: New York, New York
February 23 , 1977

Robert B. Fiske

ROBERT B. FISKE, Jr.
United States Attorney for the
Southern District of New York
Office & Post Office Address:
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
Telephone: 212-791-0055
Attorney for the United States
of America

TO DANIEL H. SHIENTAG, Esq.
160 Broadway
New York, New York 10038

RJM:jsw
74-3298

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA, :

Plaintiff, :

- v - :

BERTRAM L. PODELL, :

Defendant. :
- - - - - - - - - - - - - - - - - - - x

STATEMENT PURSUANT TO RULE 9 (g)
76 Civ. 509 (KTD)

Pursuant to General Rule 9(g) of the rules of this Court, plaintiff submits the following statement of material facts as to which plaintiff contends there is ~~no~~ genuine issue of fact to be tried: ✓

1. Bertram L. Podell plead guilty to counts 1 and 5 of the criminal indictment in United States v. Podell, et al., 73 Cr. 675.

2. Attached hereto as Exhibits A, B, and C respectively are certified copies of the following court papers in United States v. Podell, et al., 73 Cr. 675:

(a) Docket Sheet (Exhibit "A");

(b) Indictment (Exhibit "B");

(c) Transcript of Guilty Plea Allocution of Bertram L. Podell and Martin Miller (Exhibit "C").

3. Attached hereto as Exhibit D is a true copy of a check, numbered 1931, deposited and cashed, in the amount of Ten Thousand Dollars ($10,000.00), dated January 7, 1969, payable to Podell & Podell, and drawn upon the account of Leasing Consultant, Inc.

4. Attached hereto as Exhibit E is a true copy of a check, numbered 1119, deposited and cashed, in the amount of Two Thousand Three Hundred Fifty Dollars ($2,350.00), dated March 13, 1969, payable to Podell & Podell, and drawn upon the account of Leasing Consultants Incorporated.

5. Attached hereto as Exhibit F is a true copy of a check, numbered 1059, deposited and cashed, in the amount of Twenty-Nine Thousand Dollars ($29,000.00), dated May 1, 1969, payable to Citizens Committee for B. L. Podell, and drawn upon the account of Martin Miller.

6. On February 26, 1968, Bertram L. Podell took an oath of office and thereafter served in the Congress of the United States as a Member of the House of Representatives in the 90th through 93rd Congresses, i.e., from 1968 through 1974.

7. Bertram L. Podell received $41,350 in the form of payments to the Citizen's Committee for B. L. Podell and in the form of fees to the law firm of Podell & Podell.

8. These payments were received by Bertram L. Podell as compensation for services rendered by him before the Civil Aeronautics Board ("CAB") and the Federal Aviation Administration ("FAA") in connection with matters pending before those agencies involving Florida Atlantic Airlines, Inc. ("FAAI").

9. Attached hereto as Exhibits G and H respectively are certified copies of the following court papers in United States v. Podell, et al., 73 Cr. 675:

(a) Transcripts of testimony given by Joseph Jaffe, Rudolph W. Giuliani, and Martin Miller at a hearing held on November 12, 1973 (Exhibit "G");

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74-3298
02-1530

(b) Transcript of relevant direct testimony of Bertram L. Podell at trial on October 1, 1974 (Exhibit "H").

10. No official of the United States charged with responsibility to act in the circumstances was aware until August 23, 1971, that Bertram L. Podell had received compensation through fees paid to the law firm of Podell & Podell for services rendered before the CAB and FAA in connection with matters pending before those agencies involving FAAL.

11. No official of the United States charged with responsibility to act in the circumstances was aware until June 27, 1973, that Bertram L. Podell had received compensation through money paid the Citizens Committee for B. L. Podell for services rendered before the CAB and FAA in connection with matters pending before those agencies involving FAAL.

Dated: New York, New York
February 23, 1977

ROBERT B. FISKE, Jr.
United States Attorney for the
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007
Telephone: 212-791-0055
Attorney for the United States
of America

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA Plaintiff, - v - BERTRAM L. PODELL, Defendant.	**AFFIDAVIT** 76 Civ. 5[illegible]9 KTD)

DISTRICT OF COLUMBIA) ss.

STEPHEN M. WEGLIAN, being first duly sworn, deposes and says:

1. I am presently a Trial Attorney in the General Crimes Section, Criminal Division, United States Department of Justice ("Department"), and have been so employed continuously since July 31, 1967.

2. From October, 1967 through January, 1974 I was assigned to a unit in the General Crimes Section responsible for matters which included possible violations of the federal statutes dealing with bribery, conflict of interest, and misuse of public office. In such capacity, I was the first attorney in the Department to become aware of the allegation that then Congressman Bertram L. Podell had received compensation either directly or through his law firm for his services on behalf of Florida Atlantic Airlines with respect to matters pending before various federal agencies. I first learned of this allegation from my reading on August 23, 1971 of an article which was published in the Wall Street Journal on that date. A copy of said article is attached hereto as Exhibit [illegible].

3. I then recommended that the Department authorize an investigation of these allegations concerning then Congressman Bertram L. Podell for possible violations of the federal conflict of interest statute (18 U.S.C. § 203). The Department subsequently directed the Federal Bureau of Investigation ("FBI") to commence an investigation of this matter. In 1972 the Department referred its files, including the FBI's reports, to the United States Attorney for the Southern District of New York for further action.

4. I have reviewed the files of the Department's Criminal Division concerning this matter. Based upon the information contained in these files and my own personal knowledge no employee of the Department and no Federal Government official other than Bertram L. Podell knew prior to the August 23, 1971 publication of the aforementioned Wall Street Journal article that Congressman Podell may have received compensation either directly or through his law firm for the services he was rendering before various federal agencies on behalf of Florida Atlantic Airlines.

Stephen M Weglian
STEPHEN M. WEGLIAN
Attorney, Department of Justice

Signed and sworn to before
me this 17 day of February, 1977.

Notary Public

My Commission Expires 4-30-81

18A

Wall Street Journal
8/23/71

Wearing Two Hats

How a Lawmaker Used His Office in Congress To Plead Client's Cause

Rep. Podell Concedes Action Was an Indiscretion, but Was It More Than That?

Some Others Drop Practice

By Jerry Landauer
Staff Reporter of The Wall Street Journal

WASHINGTON—Congressman Bertram L. Podell sits in his office, looking grave and sounding sorry.

"I made a boo-boo," he admits.

"Yes," concedes the Brooklyn Democrat, "I committed what I consider an indiscretion."

Mr. Podell's colleagues might consider his actions something more than an "indiscretion"—a serious breach of congressional ethics, certainly, and perhaps a crime. For what lawyer-Congressman Bert Podell now confirms is that he used his congressional office to champion the cause of a legal client before a government agency.

On the afternoon of March 10, 1969, for example, the jaunty, talkative Mr. Podell went to the Civil Aeronautics Board with Martin Miller, president of Florida Atlantic Airlines. Mr. Miller was seeking permission to fly passengers between Florida and the Bahamas, permission the small airline urgently needed to stay solvent. At the time, the Congressman's law firm of Podell & Podell in Manhattan was collecting $1,000 a month in legal fees from Leasing Consultants Inc., the airline's parent company, which Mr. Miller also headed.

Mr. Podell says he acted out of generosity toward a client paying fees for unrelated work and urgently needing help in Washington. "In this business of politics it's hard to say no," he explains, contending that his intervention was an inadvertent conflict of interest. Mr. Miller's explanation differs markedly, however.

Their Man in Washington

If Mr. Podell's firm was compensated for services connected with the airline case—as Mr. Miller recalls but Mr. Podell denies—the Congressman could be in deeper trouble. Last year, the House Ethics Committee reminded lawmaker-lawyers that it's a crime to accept compensation for services rendered in a case involving the federal government—even if the work is done not by the Congressman but by a law firm in which he maintains merely a "residual interest."

Whatever his reason, the Congressman's assistance to his client wasn't just a one-time blunder. It's clear that officers of Leasing Consultants regarded him as their man in Washington. Mr. Miller frequented the Congressman's office and bandied his name about. "Through the gracious offices of Congressman Podell," another executive says, three State Department officials met with him to discuss recovering a company cargo plane seized by Uruguay. And Rep. Podell's help for the client company's wholly owned airline went well beyond that March 10 meeting.

Mr. Podell also discussed the airline case in his office with John W. Dregge, the CAB's director of congressional relations. He called in Robert G. Carnahan, Mr. Dregge's counterpart at the Federal Aviation Administration. He kept files on the matter in both his congressional offices on Capitol Hill and his law office on lower Broadway. He directed inquiries to the CAB on congressional stationery. And when the agency replied, in a letter addre
"the Honorable Bertram L. Podell,"
gressional office promptly forwarde
tram L. Podell, esq., in New York.

But It Was All for Nought

But in the end, nothing helped Florida Atlantic. The company couldn't comply with government requests to produce evidence of an authorization from the Bahamian government, as required by international air agreements. On April 1, 1969, the FAA suspended Florida Atlantic's commercial air taxi certificate. Then Mr. Podell intervened at a higher level, speaking to G. Joseph Minetti, a member of the CAB. Nevertheless, a revocation order followed, grounding the airline and pushing the parent company into bankruptcy.

The company still owes $4,000 in legal fees to Podell & Podell, the Manhattan firm Mr. Podell maintains with his father and his brother. Congressman Podell spends most Fridays and many a Monday there, drawing $2[illegible] a year in addition to his congressional salary of $42,500. He notes there are many similarities between representing legal clients for a fee and helping congressional constituents untangle semi-legal problems for free. In practice, he says, "it's very difficult to separate the work."

This is the dilemma of 70 or more Representatives and possibly a dozen Senators who continue to combine law and politics. Under the law, it's a crime for a Congressman to receive money, even indirectly, for representing a client in "any proceeding . . . request for a ruling or other determination" before a federal agency, if the U.S. is a party or if the federal government has a direct and substantial interest. Even if the Congressman's law partner does the representing, the Congressman could be prosecuted if he benefits from the fee.

The "Double-Door" Practice

Most lawmaker-lawyers read this as a flat prohibition against accepting income from any government cases their firms handle. And some have devised noteworthy arrangements to protect themselves against impropriety.

Rep. Podell's Brooklyn colleague, chairman Emanuel Celler of the House Judiciary Committee, maintains a "double-door" practice—two supposedly distinct law firms occupying the same quarters. One door lists five partners, including Mr. Celler; the other lists four, excluding him. All government-connected business is supposed to go through the second door.

A 1970 study of congressional ethics by the New York City bar association questioned the double-door technique. It urged that Senators elected to a full term and Representatives serving a third term give up law practice. "A good part of the normal activity of most urban law firms is representation of the type forbidden to members of Congress," the study found.

A relatively new rule of the American Bar

Please Turn to Page 15, Column 1

DEPARTMENT OF JUSTICE
19
AUG 23 1971
RECORDS
CRIMINAL DIVISION, [illegible] SEC.

EXHIBIT A

Wearing Two Hats: How Lawmaker Used Office to Plead Clients' Cause

Continued From Page One

Association says a government official can't permit use of his name by a law firm unless he's engaged in "active and regular" practice. This is aimed at the "facade" practice—politicians making money for nothing more arduous than referring clients, or merely lending their name to a law firm's door.

This rule is one factor in thinning the ranks of lawmaker-lawyers. Thirteen Representatives dropped their law affiliations last year, sometimes with difficulty. "I literally had to scrape it off myself," says GOP Rep. Charles E. Wiggins of California, describing his partners' reluctance some time ago to take his name off their door.

In Mr. Podell's case, he says Leasing Consultants hired his law firm sometime in 1967, before his election to Congress in February 1968; hence the client couldn't have been expecting political assistance. The fees, he's sure, were in payment for drafting the format of industrial leasing contracts and for advice "about a million other different things," certainly not for putting in a word for the beleaguered airline subsidiary.

Besides, he says, a clout-seeking client would have retained some senior Congressman, for no junior like himself can push bureaucrats around. "Why would they come to me?" he asks. "When my wife wants to travel south before Christmas I can't even buy a plane ticket—that's how powerful I am."

Mr. Miller, the Leasing Consultants president, supports this story in part, saying it was never his intent to purchase Mr. Podell's influence. But his recitation of the background scarcely squares with Rep. Podell's.

According to Mr. Miller, Leasing Consultants engaged the law firm to determine the legal status of Florida Atlantic's flights between Miami or Fort Lauderdale and Freeport in the Bahamas. The CAB had designated the carrier to fly scheduled service between those points. But the government of Great Britain, acting for the Bahamas, wouldn't accept the designation, and the State Department was reluctant to push the British.

"We retained Podell & Podell to investigate our legal rights—that was the basic thing," Mr. Miller says. If this is true, the company most likely retained the firm sometime after Mr. Podell's February 1968 election, because Leasing Consultants didn't acquire the airline until June 1968.

It does seem that Mr. Podell's recollections of his relationship with Leasing Consultants aren't always infallible. In one interview he said the law firm owned possibly 1,000 shares of Leasing Consultants stock while he was intervening on its behalf, and he remembered selling at "nowhere near the high" of $35 a share, reached in 1969. Later, after checking records, he gave "unequivocal" assurances that no Podell ever held a single share.

And without doubt, Mr. Podell does mix lawmaking with law practice to a curious degree. One $8,970-a-year employe on his congressional payroll stands by at his New York law office to run errands, to drive the Congressman's personal limousine and to operate government-provided office machinery which, according to Mr. Podell, can't be squeezed into the congressional office. Recently, the law office ran short of legal forms. Brother-partner Herbert Podell routinely asked Bertram Podell's aides in Washington to duplicate 1,000 copies, "being sure to run both sides."

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----------------------------------X

UNITED STATES OF AMERICA, :

Plaintiff, :

- v - :

BERTRAM L. PODELL, :

Defendant. :

-----------------------------------X

AFFIDAVIT

76 Civ 509 (KTD)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

Joseph Jaffe, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, and have been so employed since September 1971. In that capacity I was assigned to the case of United States v. Bertram L. Podell et al., 73 Cr. 675, and am familiar with the facts of that case.

2. Based on a review of the files in the United States Attorney's office for the Southern District of New York; on conversations with former Assistant United States Attorney, and now Associate Deputy Attorney General Rudolph W. Giuliani; conversations with Criminal Division attorney Stephen M. Weglian; and based on my own personal recollection, the criminal prosecution against Bertram L. Podell and the other defendants in that case was the result of a Grand Jury investigation conducted by this office.

The investigation was first forwarded to this office from the Justice Department Criminal Division in Washington on or about November 14, 1972 (see copy of letter from then Assistant Attorney General Henry Petersen, to then United States Attorney Whitney N. Seymour, Jr., attached hereto as Exhibit A). FBI reports were thereafter received by this office on or about December 12, 1972 (see FBI Memo to the Criminal Division dated December 12, 1972, a copy of which is attached hereto as Exhibit B). The case was first assigned to then Assistant United States Attorney Richard Ben-Veniste and ultimately to then Assistant United States Attorney Rudolph W. Giuliani in and around March, 1973. Within approximately one week of Assistant United States Attorney Giuliani being assigned, I too, was assigned to the case.

3. Based on my present recollection, and based on my conversations with Assistant United States Attorneys at the time when the case was under investigation in 1973, this office had no information and was not involved in any investigation of the facts underlying the Podell case prior to the referral of the case to this office by the Department of Justice, Criminal Division, in and around November, 1972.

s/
JOSEPH JAFFE

Sworn to before me this
22nd day of February, 1977

s/

[illegible]
[illegible] York
[illegible] 1977

MR. ABRAMOWITZ
(MR. MUKASEY)
73-0744

U.S. ATTORNEY
1972 DEC -2 AM 10:31
S.D.N.Y.

22A

Typed: 11/13/72

HEP:CWB:SMW:km
51-52-351

November 14, 1972

Mr. Whitney N. Seymour, Jr.
United States Attorney
New York, New York

Re: Congressman Bertram L. Podell; Conflict of Interest; Conspiracy to Defraud; 18 U.S.C. 203 and 371

Dear Mr. Seymour:

Pursuant to our request, the FBI has been conducting an investigation in regard to the captioned matter. The investigation has reached the stage where it now requires close and daily attention by persons in the field. Grand jury action to ascertain whether a prosecutable violation exists seems desirable.

Members of my staff have informally discussed this matter with Mr. Richard Ben-Veniste of your office as to the action required. By memorandum bearing this date, we have requested the FBI to furnish to your office copies of all of its reports and memoranda on this matter. We are also providing for your background information certain internal Departmental memoranda which reflect the status of this investigation at various stages.

It is requested that your office give this matter close attention and that you keep this Division timely advised as to your actions and recommendations as to the prosecutability of this matter.

The attorney in the Criminal Division who is most familiar with this matter is Mr. Stephen M. Weglian.

11/13/72

11/25

Records ✓
Mr. Weglian (2)
Mr. Hantman
Gen. Crimes Sec.
Mr. Petersen
FBI

Your cooperation and assistance are appreciated.

Sincerely,

HENRY E. PETERSEN
Assistant Attorney General

24A

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
New York, New York

In Reply, Please Refer to
File No.

December 13, 1972

Congressman Bertram L. Podell

On December 12, 1972, copies of investigative reports and letterhead memorandum prepared in this matter were hand delivered to United States Attorney Whitney North Seymour, Jr., Southern District of New York by Special Agent Irvin Jack Fisher. Mr. Seymour advised he was going to review the material furnished to him.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency nor duplicated within your agency.

51-52-351

T OF JUSTI

6 DEC 18 1972

CRIMINAL-GEN. CRIME SEC.

File

EXHIBIT A TO RULE 9(g) STATEMENT

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

264 73 CRIM. 675 JUDGE CAR

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	*For U. S.:*
vs.	Rudolph W. Giugliani, A (212) 264-6139
✓ BERTAM L. PODELL - All Cts. ~~open to 2,3,4,5,6,& 9~~	
✓ HERBERT S. PODELL- 1,2,5,7, 8 & 9	
✓ MARTIN MILLER - 1,4,6,7 & 9 ~~open to Cts. 4, 6 & 10~~	For Deft PODELL BERTAM James M. La Ro 522 5th Ave N.Y.
	For Defendant: PODELL HERB Robert Gould 330-Madison Ave N.Y.C. 661-3200
	For Deft Miller (local co. RABIN SILVERMAN BY: STEPHEN RABIN 80 Broad St. N.Y.C.

(08) STATISTICAL RECORD	COSTS
J.S. 2 mailed	Clerk
J.S. 3 mailed	Marshal
Violation	Docket fee
Title 18 18:201(c) & 2-Bribery Sec Cts.2-4)-18:203 Conflict of interest(5-6) 18:1001 Making false statements(8-9) 18:1623 Perjury-Ct.10) Conspiracy so to do(cts.1 & 7) (Ten Counts)	

DATE	NAME OR RECEIPT NO.	REC.		
1/2/75	Lutina	✓		
1/7/75	Treas			5
1/20/75	Mark	5		
1/27/75	Treas			
6/3/75	Podell	5000	-	
6/5/75	Treas (Escrow)			5

DATE	PROCEEDINGS
7-12-73	Filed indictment.
7-23-73	Deft.B.L. Podell(atty. present) Pleads not guilty. Deft. to be graphed and fingerprinted. Application to the U.S. Atty. if def leaves the U.S. 10 days for motions. Deft. released on his own zance.
	Deft. S. Podell(atty. present) Pleads not guilty. Deft. ordered graphed and fingerprinted. 10 days for motions.
	Deft. Miller(atty. present) Pleads not guilty. Deft. ordered ph phed and fingerprinted. 10 days for motions. Case assigned to Judge Carter for all purposes. Ward,J.
8-2-73	BERTRAM PODELL-Filed notice of appearance for the deft by James M. La Rossa.
8-2-73	HERBERT S. PODELL-Filed notice of appearance for the deft by Robert Gould.
8-2-73	MARTIN MILLER-Filed notice of appearance for the deft by I. Stephen Rabin.

73 CR 675 page 2 — 27A Judge Carter

DATE	PROCEEDINGS
8-17-73	MARTIN MILLER- Filed affdvt. and order extending defts bail limits to include the United Kingdom and Belgium during the period Aug. 20, 1973 to Aug 26, 1973.-- Wyatt, J.
8-29-73	MARTIN MILLER- Filed notice of motion to compel disclosure of all exculpatory material and information
8-29-73	MARTIN MILLER- Filed notice of motion for severance or change of venue
8-29-73	MARTIN MILLER- Filed affdvt. of Richard B. Marx in support of defendants various motions
8-29-73	MARTIN MILLER- Filed affdvt. of defendant in connection with motion for severance, et
8-29-73	MARTIN MILLER- Filed defendants affdvt. Memorandum of law in support of motion for severance and for change of venue
8-29-73	MARTIN MILLER- Filed defendants memorandum of law in support of motion for a bill of particulars, discovery, inspection and for a pre-trial conference.
8-29-73	MARTIN MILLER- Filed notice of appearance by Richard B. Marx, Esq., 2951 South Bayshore Drive, Miami, Florida 33133
8-30-73	BERTRAM L. PODELL- Filed affdvt. and notice of motion for the following: (1) discover & inspection (2) a bill of particulars (3) to produce Brady Material. -- ret. on Oct. 5, 1973
8-30-73	BERTRAM L. PODELL- Filed defts. memorandum of law in support of above motion.
8-30-73	HERBERT S. PODELL- Filed affdvt. and notice of motion for a bill of particulars and for inspection and discovery - ret. 10-5, 1973 (This motion also to be considered a joint motion with defendants B.L. Podell and M. Miller)
9-5-73	MILLER, Martin-Filed Motion to Dismiss Indictment.
9-5-73	MILLER, MARTIN-Filed Memorandum of Law in Support of Deft's Motion to D
Sep-26-73	All defendants'- Filed Governments affdvt. in opposition to various pre-trial motions.
Sep-26-73	MILLER- Filed Governments affdvt. in opposition to defts motion to dismiss indictment, or for severance.
Sep-2[illegible]-73	B. Podell- Filed Governments affdvt. in opposition to defts motion for discovery.
Sep-26-73	MILLER- Filed Governments memorandum of law in opposition to defts motion for dismissal or severance.
Sep-26-73	ALL DEFTS- Filed Governments memorandum of law in opposition to various pre-trial motions (discovery and Bills of Parriculars)
Oct-10-73	PODELL- Filed order permitting defendant to travel to Turkey and the European Continent from 10-18-73 to on ar about 11-2-73 -- Carter, J.
Oct-12-73	MILLER- Filed affdvt. in support of defendants motion to dismiss (affdvt. of Stephen Rabin)
Oct-12-73	MILLER- Filed affdvt. of Martin Miller in support of motion to dismiss indictment.
Oct-19-73	MILLER - Filed Governments affdvt. of AUSA Jaffe in opposition to defts motion to dismiss and for suppression.
Oct-19-73	MILLER- Filed Governments affdvt. of AUSA Mukasey in opposition to defts motion to dismiss and for suppression
Oct-19-73	MILLER- Filed Governments affdvt. of AUSA Giuliani in opposition to defts motion to dismiss and for suppression

DATE	PROCEEDINGS
Nov.7-73	MILLER--Filed memorandum in support of motion of deft. to dismis indictment.
Nov.12-73	MILLER--(atty. present)--Hearing begun and concluded. Dec. Reser Carter, J.
Nov.15-73	HERBERT S. PODELL--Filed Consent order--Ordered that the bail limits of Herbert S. Podell is ext. so as to permit him to to and from the Bahamas on Nov. 21,1973 and Nov. 25, 1973 is further ordered that deft. Herbert S. Podell shall retu to the SDNY and appear before this Court within 48 hrs. of receipt by his attys.,Shea,Gould,Climenko and Kramer of an written notice from the office of the U.S. Atty.,for the S requesting his return. Carter, J.
Nov. 29-73	MILLER--Filed defts. post hearing memorandum in support of mot to dismiss the indictment.
Dec.7-73	Filed Government Notice of Readiness for Trial
Jan-4-74	MARTIN MILLER- Filed affdvt. and notice of motion for severance - ret. 1- MARTIN MILLER- Filed defts. memorandum of law in support of motion for seve
Jan -4-74	BERTRAM L. PODELL- Filed affdvt. and notice of motion to suppress - ret. 1- at 4:30 PM
Jan.11-74	Filed Government's Memorandum in opposition to Deft. Miller's second motion severance.
Jan.10-74	Filed Government Determination and Designation - Theodore Katz, Law Clerk the undersigned Judge is hereby designated and authorized to atten w/counsel for the deft. Bertram L.Podell at the office of the Cle House of Representatives of the U.S.Congress to obtain certified co said reports, the originals of which are in the possession and cont said Clerk - Carter, J. (m/n)
Jan. 11-74	Filed one envelope sealed, not to be opened except on authority of Carter, J.(in vault) rm.602.
Jan. 11-74	Filed ORDER--Ordered that the copies of any documents to be served Atty. Gen. of the US in response to defts. electronic surveillance motions shall be tuned over tbe the counsel for the defts shall be retained in the cusody of such counsel and access to the aforemen documents is restricted to the defts. and their counsel,etc. as Carter J.
Jan.14-74	Filed OPINION #40229 - re: MARTIN MILLER's motion to dismiss the Indictm against him is denied. (m/n)
Jan.14-74	Filed Memorandum of Law in opposition to Deft. Bertram Podell's Motion to and to dismiss Count ten.
Jan.14-74	Filed Memo-endorsed on Notice of Motion dtd 1/4/74 - Motion denied- So o Carter, J. (m/n)
Jan.10-74	Filed ORDER TO SHOW CAUSE returnable at 10:00 A.M. Rm.1305, why an order not be entered pursuant to Title 18, U.S.C. Sec.3503 due to exception circumstances existing in this case etc. -- Carter, J.
Jan.15-74	Filed Answering Affidavit in opposition to the Government's Motion by show cause re: above.

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DATE	PROCEEDINGS
Jan.15-74	Filed OPINION #40221 - The government moves by order to show cause to be permitted to take deposition of Ronald C. Kinsey and Albert Waldman, pursuant to Title 18, U.S.C.Sec.3503. The defts. are charged with conspiracy to defraud the governmen accepting and giving bribes, conflict of interest, conspiracy to give false statements and giving false statements to the FBI and perjury. --Because removal of doubt concerning th is question is of general significance and of critical importance to the parties in this case, I have requested, and both sides have agreed to cooperate in seeking an early review and resolution by the Court of Appeals. Accordingly, the trial is adjourned until February 4. - Carter, J. (m/n)
Jan.30-74	MARTIN MILLER - Filed Order extending bail limitation of Deft. to include Mexico during 1/24/74 to 1/31/74 - Carter, J.
Feb.1-74	Filed ORDER--Theodore Katz, Law Clerk to Judge Gerald Shargel of counsel to James La atty. for the deft. Bertram Podell & Joseph Jaffe, Asst. U.S.Atty. for SDNY of counsel to Paul J.Curran, U.S.Atty for U.S.A. shall attend together at the offi said Clerk of the House of Representatives of the U.S.Congress, on 2/8/74 at 11:00 A.M. to obtain certified copies of the reports, the originals of whichare in the possession and control of the said Clerk, which were the subject of the Subpoena Duces Tecum dtd. 10/19/73, duly served on the Clerk of the House of Repres It is so ordered - Carter, J.
Feb.20-74	Filed ORDER--Harlon Dalton Law Clerk to Judge Andrew Kosloff associated w/James LaRos atty. for the deft. Bertram L. Podell & Joseph Jaffee, Esq.Asst.U.S.Atty. for S of counsel to Paul J.Curran, U.S.Atty. shall attend together at the office of sai of the House of Representatives of U.S.Congress on 2/21/74 at 11:00 A.M. to obt certified copies of reports the originals of which are in the possession and co of said Clerk, which were subject of Subpoena Duces Tecum dtd 12/19/73 duly ser on the Clerk of the House of Representatives. It is so ordered - Carter, J.
Mar.1-74	Filed Memo-endorsed on Notice of Motion for Severance dtd 2/7/74 -- Motion granted. So ordered - Carter, J. (m/n)
Mar.4-74	Filed for Herbert S. Podell -- Notice of Motion for Severance returnable 2/7/74 severing the trial of deft. Podell etc.
Mar.4-74	Filed ORDER to take deposition of Ronald C. Kinsey Government witness, on March 11, 1 at 10:00 A.M.--The defts together with their retained counsel shall have the rig to attend the said examination and to cross examine--The expenses of travel & subsistence of the defendants and one attorney for each deft. and be paid by the Govt. and U.S.Marshal for SDNY is directed to make such payment as is proper. This order shall constitute proper notice of the deposition to be taken. The Government os not required to serve any further notice pursuant to Title 18, U.S. Sec.3503(b)- It is so ordered - Carter, J.
3-15-74	HERBERT S. PODELL - Filed ORDER that deft be permitted to travel from 3/16/74 -- 3/24/74- Carter, J.
3-15-74	HERBERT S. PODELL - Filed Affidavit in support of deft's application for permission travel.
3-26-74	Filed ORDER to ake deposition of Ronald C. Kinsey, on 4/5/74 - the expenses of trave subsistence of the defts. and one atty. for each deft. shall be paid by the Govt. and U.S.Marshal for S.D.N.Y. is directed to make such payments as are proper. The Clerk of U.S.D.C. of Western District of Washington, is directed to issue a subpoena for Ronald C. Kinsey, compelling his appearance time and place. This or shall constitute proper notice of deposition to be taken. CARTER, J.

DATE	PROCEEDINGS
Mar-27-74	Filed True Copy from U.S.Court of Appeals - that petition for a writ of Mand having been filed herein by counsel for the petitioner and argument have thereon, it is ordered that said petition be and it is hereby granted in accordance with the opinion of this court. - Clerk.
Apr.3-74	Filed ORDER the deposition of Ronald Kinsey to be held according to an order and filed on 3/26/74 shall be held on Friday 4/12/74 at 10 A.M., and that is amended accordingly - CARTER,J.
4-19-74	Filed Deposition of Ronald C. Kinsey taken 4/12/74 ~~Dated~~ at Seattle, Wash.
5-17-74	Filed Notice of Motion for Deft. Martin Miller, returnable 5/31/74 at 10AM f order dismissing Ct.4 or Ct.6 of Indictment etc.
5-17-74	Filed Memorandum of Law in support of motion tocompel election of counts and compel witness list.
5-29-74	Filed Government's Memorandum in Opposition to Miller's Motions for dismissal election of Counts and discovery.
5-29-74	Filed for Deft. Herbert S. Podell Consent Order extending bail limits - to to Europe and the Middle East during period of 5/23/74 and concluding 6/4/ Ordered that deft. be permitted to travel during aforesaid period - CARTER.
Jul-2-74	Filed one envelope ordered sealed by the Court - Carter, J. (placed in vault room 602)
7-25-74	Podell & Miller Filed Transcript of record of proceedings, dated 3-5-74
7-23-74	Filed Transcript of record of proceedings, dated 1-11-74
7-29-74	Filed Affidavit of William Hoar, pursuant to court's order of 1/5/73.
7-29-74	Filed Affidavit of William B. Saxbe, in connection with the opposition to the information concerning overhearings etc.
7-29-74	Filed Govt's. Memorandum of law in support of its motion to depose Ronald Ki Albert Waldman.
7-29-74	Filed Govt. Bill of Particulars
7-29-74	Filed Govt. Memorandum of law.
8- 2-74	PODELL & MILLER- Filed opinion #41059 deft. Podell's motion to suppress and to dismiss ct. 10, etc. is in all respects for reasons indicated herein. Deft. Miller's motions for severance, for an order to com are denied. So ordered -- Carter, J. m/n
8-7-74	MILLER- Filed deft's affdvt. and notice of motion to dismiss ret. 8-19-74
8-7-74	MILLER- Filed deft's memorandum in support of above motion.
8-20-74	MILLER- Filed Governments affdvt. in opposition to deft's motio dismiss.

over

73 CRIM 675 USA vs. Pdell, et. al. **31A** Page #6 R.L.C.

DATE	PROCEEDINGS
6-20-74	Miller- Filed Governments memorandum in opposition to deft's motion to dismiss.
-22-74	All defts- Filed Governments memorandum in support of motion to sequester jury
6-22-74	All defts- Filed Governments affdvt. and notice of motion to sequester jury -
8-23-74	Filed Supplemental Memorandum of Law in support of Deft. Martin Miller's motion to di based on pre-indictment and post indictment delay
8-30-74	Filed Memorandum of Law in opposition to the Government's motion to sequester the Jur
9-3-74	Filed Defts. Memorandum of Law in opposition to Motion to Sequester Jury
~~-4-74~~	~~Filed Transcript of [illegible] Proceedings, [illegible] 3-1-74~~
-9-74	Filed OPINION #41147 -- Defendant has filed yet another out of time pretrial motion. In this motion Miller seeks a dismissal of the indictment, contending violation of his Fifth and Sixth Amendment rights of his rights under Rule 48(b) jF.R.C.P and the rules of this Circuit in respect of the prompt disposition of criminal case . . . The motion is accordingly denied So ordered - Carter, J. (m/n) toRabinASilve Marx & Squitero.
9-10-74	Filed ORDER - ORDERED that the defendant Martin Miller be examined by Dr. Michael Clinical Professor of Urology at the University of Miami Medical School, Miami and it is further ordered that the results at such examination be reported to and it is further ordered that the U.S.A. pay the cost of such examination and CARTER,J.
Sep.13-74	Filed proposed Voir Dire Examination on behalf of Deft. Martin Miller
Sep.16-74	BERTRAM L. PODELL and MARTIN MILLER - Jury Trial begun as to defentants. Count 7 is dismissed to both Defts.
Sep.19-74	Trial continued
Sep.20-74	Trial continued
Sep.23-74	Trial continued
Sep.24-74	Trial continued
Sep.25-74	Trial continued
Sep.27-74	Trial continued
Sep.30-74	Trial continued
Oct. 1-74	Trial continued, and concluded. Defendant BERTAM L.PODELL (atty. present) withdraws his plea of Not Guilty and pleads GUILTY to counts 1 and 5. PEresenten Report or. Sentence adjourned to January 9,1975 at 9:30 A.M. Deft. continued R.O.R.
Oct.1-74	MARTIN MILLER (atty present) Withdraws his plea of Not Guilty and Pleads GUILTY to Count 1 only. Pre-Sentence report ordered. Sentence adjourned to January 7, 19 at 9:30 A.M. Deft. continued R.O.R. - CARTER,J.
10-2-74	Filed Government's Memorandum of Law - Podell's participation in the Conspiracy
10-2-74	Filed Governmen(t)s Memorandum of Law Admissibility of Portions of Miller's Grand Jur Testimony
10-2-74	Filed Govt. Memorandum of Law

DATE	PROCEEDINGS
10-2-74	Filed Govt/s Memorandum of Law Judicial Notice of Campaign Contribution Laws.
10-2-74	Filed Government's Memorandum of Law in support of admissibility of Zorovich Business Card
10-2-74	Filed Government's Memorandum of Law - Intent to influence an official act includ payment of money to a public official in return for the use of the Influence inherent in office.
10-2-74	Filed Deft. Bertram L. Podell's Memorandum of Law.
10-2-74	Filed Affidavit of Joseph Jaffee in opposition to motion for disclosure of survell
10-2-74	Filed Affidavit of Rudolph Giuliani, Joseph Jaffe and Michael Mukasey, in further support of Government's position that the Court should determine *ex parte* that the electronic surveillance conducted was legal etc.
10-2-74	Filed Memorandum of Law in opposition to Deft. Bertram L. Podell's Motion to suppress and to Dismiss Count 10
10-2-74	Filed Reply Memorandum of Law in support of Motion to compel witness List.
10-2-74	Filed Government's Memorandum of law - official communication
10-2-74	Filed Govt!s Proposed offer of Kinsey Deposition
10-2-74	Filed Govt's Memorandum of Law
10-2-74	Filed Government's Memorandum of Law - Admissiblity of Statements of Joint Ventu
10-2-74	Filed Government's Memorandum of Law - Prior consistent statement
10-2-74	Filed Government's Memorandum of Law - Witness' Opinion as to Illegality is Inadm
10-2-74	Filed Deft. Bertram L. Podell's Memorandum of Law
10-2-74	Filed Govt's Memorandum in opposition to Deft. Podell's motion to dismiss Counts 1 2 and 3.
10-2-74	Filed Govt's Memorandum of Law
10-2-74	Filed Govt!s. Memorandum in opposition to Deft. Podell's Motion to dismiss Count
10-2-74	Filed Order - Determination and Designation of Ronald J.L.Jackson, legal Technici of U.S.Atty's Office, is, by consent of all parties, hereby designated and authorized to attend at the office of the Clerk of the House of Representativ of the United States Congress, as a representative of all aprties to this act to obtain certified copies of said documents the originals of which are inthe possession and control of the said clerk - CARTER,J.
Oct.7-74	Filed govts. memorandum of law.
10-8-74	Filed Deft's Memorandum of Law

DATE	PROCEEDINGS	Date Judg
11-12-74	Filed Transcript of record of proceedings, dated Sept. 16, 19, 20, 23, 24 1974	
✓	Filed Transcript of record of proceedings, dated Sept. 27, 30, Oct. 1 - 1974	
13-75	BERTRAM PODELL MARTIN MILLER Filed defts. afidt. and notice of motion for an order permitting defts. towithdraw guilty pleas, ret. on:Jan.9,1975.	
3-75	Filed memo end. on above motion---Hearing held on defts. motion to withdraw the guilty pleas of defts. BERTRAM PODELL AND MARTIN MILLER. Motion denied, So ordered, Carter, J. m/n	
9-75	MARTIN MILLER--Filed JUDGMENT(atty. Richard Marx present)--the deft. is hereby committed to the custody of the Atty. General or his authori representative for imprisonment for a period of (2) TWO YEARS on Count 1, and on the condition that the deft. be confined in a jail type institution for a period of (6) SIX MONTHS, the execution of the remainer of the sentence of imprisonment is hereby suspended. Pursuant to Title 18, United States Code, Section 3651. The deft. is FINED $10,000, fine is to be paid or the deft. is to stand committed. Deft. was advised of his rights to appeal. The open counts are to remain open until the United States Court of Appeals for the Second Circuit,;hears the matter on appeal or issues a stay. The deft. surrender is stayed pending the filing of a notice of appeal no later than January 24,1975. Carter, J. (copies iss	
9-75	BERTRAM L. PODELL--(filed JUDGMENT)(atty. James LaRossa and Gerald Shargel)--the deft. is hereby committed tothe custody of the Atty. General or his authorized representative for imprisonment for a period of (2)(TWO)YEARS on COUNT 1, and on the condition that the deft. be confined in a jail type institution for a period of (6) SIX MONTHS, the execution of the remainder of the sentence of imprisonment is hereby suspended. Pursuant to Title 18, United States Code, Section 3651. On Count 5, the deft. is FINED $5,000, fine is to be paid or the deft. is to stand committed. Deft. was advised of his rights to appeal. The open counts are to remain open until the United States Court of Appeals for the Second Circuit, hears the matter on appeal or issues a stay. The deft. surrender is stayed pending thefiling of a notice of appeal no later than January 24,1975. Carter, J. (copies issued)	
1-10-75	BERTRAM PODELL MARTIN MILLER Filed defts. joint memorandum of law.	
1-13-75	BERTRAM PODELL--Filed defts. notice of appeal to the USCA from an order denying defts. motion to withdraw his plea of guidty. (copies mailed to USAtty, deft. at home and defts. atty.)	
1-20-75	MARTIN MILLER--Filed defts. notice of appeal to the USCA from the judgment of conviction for conspiracy to commit conflict of interest entered on Oct. 1,1974 and more specifically Court's order of Jan.11,1 denying defts. motion to dismiss indictment and court's oral order of Jan.9,1975. (copies mailed to LaRossa, Shargel and Fischetti, atty. for deft. Podell and to the AUSA)	

DATE	PROCEEDINGS
01-27-75	BERTRAM PODELL--Filed notice that the original record on appeal has been certified and transmitted to the USCA this date.
02-11-75	BERTRAM PODELL--Filed notice that the supplemental record on app: has been certified and transmitted to the USCA this date.
2-11-75	Filed Transcript dated 1/9/75
07-29-75	MARTIN MILLER--Filed defts. affdt. and notice of motion for reduction of sentence.
07-29-785	MARTIN MILLER--Filed affdt. of Richard Marx in support of above
07-31-75	MARTIN MILLER-- Filed Governments affdv in opposition to motic: for reduction of sentence.
07-24-75	BERTRAM PODELL MARTIN MILLER Filed true copy of order from USCA(with opinion a: Ordered that the judgments of the District Court are affirmed in accordance with the opinion of this court. Clerk, Judgm entered, Clerk m/n (J Carter)
08-06-75	MARTIN MILLER--Filed memo end. on defts. motion dated July 29,19 Motion for deft. to surrender and serve his present term in F is granted. Motion for stay and modifiction of sentence is denied. So ordered, Carter,J.(copy to marshal's office) m/:
10/3/75	M. Miller - Filed commitment & entered return, Deft. delivered to by mail to Warden, Fed. Prison Camp, Eglin, AFB, Florida on 9/16/75.
12-09-75	BERTRAM L. PODELL- Filed Order Amending Judgment & Commitment. Ordered that Judgment & Commitment herein be and the same hereby is amended to show that Court recommends that Deft serve his sentence at Eglin Air Force Base, Flori and that the Court recommends that all steps be taken to assure the earliest possible surrender date pursuant to this Court's Surrender Order as of this date.--CARTER,J.
12-09-75	BERTRAM L. PODELL- Filed Deft's Consent Surrender Order.
12-11-75	MARTIN MILLER- Filed Gov't Memorandum in opposition to Deft's motion to dis the indictment. (Filed in Chambers 11-09-75)
12-11-75	MARTIN MILLER- Filed Gov't Memorandum of Law. (Filed in Chambers 12-11-73)
12-23-75	BERTRAM L. PODELL- Filed Deft's Notice of Motion for reduction of Sentence pursuant to Rule 35 of the F.R.Cr.P.
01-05-76	MARTIN MILLER- Filed Deft's affdvt & Notice of motion for reduction of sent imposing fine.
01-08-76	BERTRAM L. PODELL- Filed Govt's affdvt of Michael B. Mukasey, AUSA, in opp to Deft's motion for reduction of sentence.
01-21-76	MARTIN MILLER- Filed Order on Deft's motion for reducing of sentence imposi

(Cont'd on Page #10)

DATE	PROCEEDINGS
01-28-76	BERTRAM L. PODELL= Filed MEMO ENDORSEMENT on Deft's notice of motion for reduction of sentence filed 12-23-75. MOTION DENIED, SO ORDERED---CARTER, J. (m/n)
1-30-76	MARTIN MILLER= Filed AMENDED Judgment & Commitment Order - The Judgment of January 9, 1975 is hereby amended as follows: The Deft having been fined $10,000. dollars and the fine having to be paid or the Deft is to stand committed, is hereby reduced from $10,000.00 to the Total of $5,000.00. The fine is to be paid over a period of Thirty (30) Months, in TWENTY(29)NINE, equal monthly installment of $160,00 per Month and the THIRTIETH(30) payment in the amount of $360.00. Said monthly payments shall commence 180 Days from the date of the Deft, Martin Miller's release from incarceration. The Government consents to the DISMISSAL of COUNTS 4,6,7, and 9. ---CARTER, J.
02-05-76	The Government in a letter to the Court consents to the DISMISSAL of the OPEN COUNTS as to both Defts, BERTAM L. PODELL and MARTIN MILLER. (The letter will be made part of the file).---CARTER, J.
02-06-75	Filed Letter dated 02-06-76 written by Michael B. Mukasey, A.U.S.A., stating that the Government has no objections to tha dismissing the open counts against Deft.s Podell & Miller.
02-18-76	Filed transcript of record of proceedings, dated Sept 25, 1974
03-08-76	HERBERT S. PODELL= Entered and filed NOLLE PROSEQUI- GRANTED- CARTER, J.
1-24-75	MARTIN MILLER = Filed True Copy of order from the Supreme Court of the U.S. that Certiorari is denied. (m/n)
1-24-75	BERTRAM L. PODELL= Filed True Copy of order from the Supreme Court of the U.S that Certiorari is denied.
2.24.76	[illegible] transcript of record of proceedings, dated 11.12.73
02-05-76	Bertam L. Podell- Filed commitment & entered return, Deft delivered to Federal Pri[illegible] Camp. Eglin Air Force Base, Fla.
2-17-76	MARTIN MILLER- Filed commitment & entered return, Deft delivered to THE Federal Prison Camp Eglin Air Force Base

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By [illegible] Deputy Clerk

CR

EXHIBIT B TO RULE 9(g) STATEMENT

USDC
FILED
7-12-73
SDNY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA, :

- v - :

BERTRAM L. PODELL, :
HERBERT S. PODELL, and
MARTIN MILLER, :

Defendants. :

- - - - - - - - - - - - - - - - - - x

INDICTMENT

73 Cr. 675

INTRODUCTION

1. The defendant, BERTRAM L. PODELL, at all times relevant to this indictment, was a Member of Congress representing the Thirteenth Congressional District in Brooklyn, New York and was an attorney and a partner in the law firm of Podell and Podell, 160 Broadway, New York, New York.

2. The defendant, HERBERT S. PODELL, at all times relevant to this indictment, was an attorney and a partner in the said law firm of Podell and Podell.

3. The defendant, MARTIN MILLER, from 1967 through 1971 was President of Leasing Consultants, Inc. (LCI).

4. Co-conspirator Kenneth G. Burnstine, from 1967 through 1968 was President of, and at all times relevant to this indictment, a stockholder in Florida Atlantic Airlines, Inc. (FAAL).

5. Co-conspirator Michael Zorovich, now deceased, from 1967 through 1970, was an officer of FAAL.

6. LCI was incorporated in 1967 and was engaged in leasing, including the leasing of aircraft. In or about March, 1968 LCI began negotiations to acquire FAAL, a Florida based air taxi operator, and in June, 1968 LCI acquired FAAL. On March 22, 1968 FAAL applied to the Civil Aeronautics Board (CAB) for designation to provide regularly scheduled air service over a route between Florida and Freeport, Grand Bahama Island (a route 9 designation).

COUNT ONE

The Grand Jury charges:

1. From in or about March 1968, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, BERTRAM L. PODELL, ~~HERBERT S. PODELL,~~ and MARTIN MILLER, the defendants, and Kenneth G. Burnstine, and Michael Zorovich, named as co-conspirators but not as defendants, did combine, conspire, confederate and agree together and with each other and with other persons to the Grand Jury known and unknown, to violate Section~~s 201 and~~ 203 of Title 18, United States Code and to defraud the United States and its departments, agencies and branches by obstructing, hindering and impairing said departments, agencies and branches in connection with the performance of their lawful governmental functions, including;the lawful governmental functions of the United States Congress and the legitimate representation by its Members of the interests of the United States and their constituents; the lawful governmental functions of the Civil Aeronautics Board (CAB), the Federal Aviation Administration (FAA) ~~and the Department of State~~ in considering and approving routes for international air travel; the lawful governmental functions of the FAA in its determinations as to revocations of operating certificates; and the lawful governmental functions of the Department of State in its relationships with foreign governments,

2. It was a part of said conspiracy that the defendants and their co-conspirators would and did agree to defraud the United States of the honest, and unbiased, services of a Member of Congress, by the payment to, and acceptance by, the defendant BERTRAM L. PODELL of money and other consideration in return for the said defendant

BERTRAM L. PODELL using his office, prestige and influence as a Member of Congress to intercede with the FAA, the CAB, the Department of State and the Government of the Bahama Islands for the purpose of obtaining a route 9 designation for FAAL by unlawful and fraudulent means.

3. It was further a part of said conspiracy that the defendants and their co-conspirators would and did agree to defraud the United States and departments, agencies, and branches thereof, including the FAA, the CAB and the Department of State by: (1) making and causing to be made to the aforementioned agencies, departments and bodies false statements and corruptly and fraudulently procured representations from the Government of the Bahama Islands and the United Kingdom with respect to the granting of a route 9 designation to FAAL; (2) using the office, prestige and influence of the defendant BERTRAM L. PODELL, through payment to him and others of money and other consideration, to affect the judgment of the aforementioned departments, agencies and branches with respect to, among other things, the granting of a route 9 designation to FAAL.

4. It was further a part of said conspiracy that the defendant MARTIN MILLER and co-conspirators Kenneth G. Burnstine and Michael Zorovich would and did give, offer and promise money and other things of value and the defendants BERTRAM L. PODELL and HERBERT S. PODELL would and did ask, demand, exact, solicit, seek, accept, receive and agree to receive said money and other things of value on behalf of themselves and others, in return for the defendant BERTRAM L. PODELL being influenced in the

performance of official acts as a Member of Congress, being influenced to commit and aid in committing and collude in and allow a fraud and make opportunity for a fraud on the United States, being influenced to do and omit to do acts in violation of his official duty, and in return for services rendered by the said defendant, BERTRAM L. PODELL, and others in relation to proceedings, applications, requests for rulings and other determinations, controversies and matters in which the United States was a party and had a direct and substantial interest, before the CAB, the FAA and the Department of State.

5. Among the means by which the defendants and their co-conspirators would and did carry out the unlawful purposes set forth above, were the following:

(a) The defendant MARTIN MILLER and co-conspirators Kenneth G. Burnstine and Michael Zorovich, directly and indirectly would and did ask the defendant BERTRAM L. PODELL, and the defendant BERTRAM L. PODELL would and did agree, to use his office, prestige and influence as a Member of Congress to help secure a route 9 designation for FAAL by fraud, corruption and misrepresentation and otherwise assist FAAL in its dealings with the CAB, the FAA and the Department of State.

(b) The defendant BERTRAM L. PODELL would and did, travel to the Bahama Islands to speak to United States and Bahamian officials, and send letters and make telephone calls to, and attend meetings with, officers and employees of the United States and of agencies and departments thereof, including the CAB, the FAA and the

~~Department of State~~, for the purpose of affecting, inducing, and pressuring said officials, officers and employees on behalf of FAAL.

(c) The defendant MARTIN MILLER and co-conspirators Kenneth G. Burnstine and Michael Zorovich would and did offer, and would and did ~~directly and~~ indirectly pay and caused to be paid, money and other things of value to the defendants BERTRAM L. PODELL, and ~~HERBERT S. PODELL~~, and others, in the form of payments to the Citizen's Committee for the Reelection of Bertram L. Podell and in the form of fees to the law firm of Podell & Podell, and the defendants BERTRAM L. PODELL and ~~HERBERT S. PODELL~~ would and did agree to receive and did receive money and other things of value in return for the services described in paragraphs ~~5(a)~~ ~~and~~ 5 (b) of this count.

OVERT ACTS

In furtherance of, and to effect the objects of said conspiracy, the defendants and co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

1. In or about December, 1968 the defendant MARTIN MILLER and co-conspirator Kenneth G. Burnstine and others met in Queens County, New York.

2. In or about December, 1968 the defendant BERTRAM L. PODELL engaged in telephone conversations and meetings with representatives of LCI and FAAL and others at his office at 160 Broadway, New York, New York.

3. On or about December 16, 1968, the defendants BERTRAM L. PODELL and MARTIN MILLER, and others met at Kennedy International Airport, Queens County, New York.

4. On or about December 19, 1968 the defendant BERTRAM L. PODELL wrote, signed and caused to be mailed a letter to the CAB in Washington, D. C.

5. On or about December 19, 1968 the defendants BERTRAM L. PODELL and HERBERT S. PODELL caused a bill for $10,000 to be mailed from New York, New York to the offices of LCI, in Queens County, New York.

6. On or about January 7, 1969 the defendants BERTRAM L. PODELL and HERBERT S. PODELL received in New York, New York a check for $10,000 from LCI.

7. On or about March 1, 1969 the defendants BERTRAM L. PODELL and HERBERT S. PODELL caused a bill for $2,350 to be mailed from New York, New York to the offices of LCI in Queens County, New York.

8. On or about March 17, 1969 the defendants BERTRAM L. PODELL and HERBERT S. PODELL caused a bill for $3,350 to be mailed from New York, New York to the offices of LCI in Queens County, New York.

9. On or about March 17, 1969 the defendants BERTRAM L. PODELL and HERBERT S. PODELL received a check in New York, New York for $2,350.

10. On or about April 12, 1969 the defendants BERTRAM L. PODELL and HERBERT S. PODELL caused a bill for $2,000 to be mailed from New York, New York to the offices of LCI in Queens County, New York.

11. On or about May 1, 1969 the defendants BERTRAM L. PODELL and HERBERT S. PODELL caused a bill for $3,000 to be mailed from New York, New York to the offices of LCI in Queens County, New York.

12. On or about May 1, 1969 the defendant MARTIN MILLER delivered to the defendant BERTRAM L. PODELL a check for $29,000.

13. On or about June 17, 1970 the defendant BERTRAM L. PODELL and co-conspirator Michael Zorovich met with an official of the CAB in Washington, D. C.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

From in or about December, 1968 up to and including September 24, 1970, in the Southern District of New York, BERTRAM L. PODELL, being then a public official of the United States, to wit, a Member of Congress, and HERBERT S. PODELL, the defendants, directly and indirectly, unlawfully, wilfully, knowingly, and corruptly did ask, demand, exact, solicit, seek, accept, receive and agree to receive things of value for themselves and for other persons and entities, including money, namely, $12,350 received in partial payment of bills totalling $28,350 from the law firm of Podell & Podell to LCI on behalf of themselves and others, in return for the defendant BERTRAM L. PODELL: (a) being influenced in his performance of official acts; (b) being influenced to commit and to aid in committing, and to collude in, and to allow, a fraud, and to make opportunity for commission of a fraud, on the United States; and (c) being influenced to do and omit to do acts in violation of his official duty; to wit, in return for the defendant BERTRAM L. PODELL being influenced to use his official position as a Member of Congress to affect, induce, persuade and pressure, among others, the Department of State, the CAB and the FAA and officers and employees of the aforesaid departments, boards and agencies, and the Government of the Bahama Islands and its agencies, boards, ministers, officials, and employees to, among other things, approve and grant FAAL the right to fly a regularly scheduled air route from Florida to the Bahamas and to affect, induce, persuade and pressure the FAA with respect to proceedings to revoke FAAL's operating certificate.

(Title 18, United States Code, Sections 201(c) and 2.)

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COUNT THREE

The Grand Jury further charges:

On or about May 1, 1969, in the Southern District of New York, BERTRAM L. PODELL, being then a public official of the United States, to wit, a Member of Congress, directly and indirectly, unlawfully, wilfully, and knowingly, and corruptly did ask, demand, exact, solicit, seek, accept, receive and agree to receive things of value for himself and for other persons and entities, including money, namely, $29,000 received in the form of a check payable to the Citizens Committee for B.L. Podell, on behalf of himself and others, in return for the defendant BERTRAM L. PODELL: (a) being influenced in his performance of official acts; (b) being influenced to commit and to aid in committing, and to collude in, and to allow, a fraud, and to make opportunity for commission of a fraud, on the United States; and (c) being influenced to do and omit to do acts in violation of his official duty; to wit, in return for the defendant BERTRAM L. PODELL being influenced to use his official position as a Member of Congress to affect, induce, persuade and pressure, among others, the Department of State, the CAB and the FAA and officers and employees of the aforesaid departments, boards and agencies, and the Government of the Bahama Islands and its agencies, boards, ministers, officials, and employees to, among other things approve and grant FAAL the right to fly a regularly scheduled air route from Florida to the Bahamas and to affect, induce, persuade and pressure the FAA with respect to proceedings to revoke FAAL's operating certificate.

(Title 18, United States Code, Sections 201(c) and 2).

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COUNT FOUR

The Grand Jury further charges:

From in or about December, 1968 up to and including September 24, 1970 in the Southern District of New York, MARTIN MILLER the defendant, directly and indirectly, unlawfully, wilfully, knowingly, and corruptly did give, offer and promise things of value, including money as described in counts two and three of this indictment, to a public official, namely, BERTRAM L. PODELL, a Member of Congress, and to other persons and entities with intent: (a) to influence official acts; (b) to influence said public official to commit and aid in committing, and collude in, and allow, a fraud, and make opportunity for commission of a fraud, on the United States; and (c) to induce said public official to do and omit to do acts in violation of his lawful duty; namely, with intent to influence BERTRAM L. PODELL to use his official position to affect, induce, persuade and pressure, among others, the Department of State, the CAB and the FAA and officials and employees of the aforesaid departments, boards and agencies and the Government of the Bahama Islands and its agencies, boards, ministers, officials, and employees to, among other things, approve and grant FAAL the right to fly a regularly scheduled air route from Florida to the Bahamas and to affect, induce, persuade and pressure the FAA with regard to proceedings to revoke FAAL's operating certificate.

(Title 18, United States Code, Section 201(b)).

COUNT FIVE

The Grand Jury further charges:

From in or about December, 1968 up to and including September 24, 1970, in the Southern District of New York, BERTRAM L. PODELL, a Member of Congress, and ~~HERBERT S.~~ ~~PO~~DELL, the defendants, unlawfully, wilfully and knowingly otherwise than as provided by law for the proper discharge of official duties, directly and indirectly did receive and agree to receive, ask, demand, solicit, and seek compensation for services rendered and to be rendered by the defendant BERTRAM L. PODELL and others in relation to proceedings, applications, requests for rulings and other determinations, controversies and other particular matters in which the United States was a party and had a direct and substantial interest, before departments, agencies and officers of the United States, namely, an application by FAAL for a route designation then pending before the CAB ~~and the Department of State~~, and a proceeding for suspension and revocation of FAAL's operating certificate then pending before the FAA and the National Air Transportation Safety Board.

(Title 18, United States Code, Sections 203(a) and 2).

COUNT SIX

The Grand Jury further charges:

From in or about December 1968 up to and including September 24, 1970, in the Southern District of New York, MARTIN MILLER, the defendant, unlawfully, wilfully and knowingly, otherwise than as provided by law for the proper discharge of official duties, directly and indirectly did give, promise and offer compensation for the services described in Count Five of this indictment, rendered and to be rendered at a time when BERTRAM L. PODELL, the person to whom the compensation was given, promised and offered, was a Member of Congress.

(Title 18, United States Code, Section 203(b)).

COUNT SEVEN

The Grand Jury further charges:

1. From in or about October, 1969 up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere, BERTRAM L. PODELL, HERBERT S. PODELL, and MARTIN MILLER, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with others to the Grand Jury known and unknown, to defraud the United States and to violate Sections 1001, 1503, 1510 and 1623 of Title 18, United States Code.

2. It was a part of said conspiracy that the defendants and their co-conspirators would and did agree that in their statements and representations to the Department of Justice, the Federal Bureau of Investigation, a Federal Grand Jury, and others, they would conceal, falsify and misrepresent the fact that money was paid to the defendants BERTRAM L. PODELL and HERBERT S. PODELL, and others, in substantial part in return for use by the defendant BERTRAM L. PODELL of his office, prestige, and influence as a Member of Congress, and of his services, among other things, to assist FAAL in obtaining a route 9 designation.

3. It was further a part of said conspiracy that the defendants and their co-conspirators would and did agree to defraud the United States of, and to impair and obstruct, the lawful governmental functions of the

Department of Justice, the Federal Bureau of Investigation, and a Federal Grand Jury to investigate violations of federal law, by interfering with and obstructing said agencies, departments and bodies by deceit, craft, trick and by other means that are dishonest, in that they would and did agree to conceal and misrepresent material facts relating to violations of Sections 201, 203 and 371 of Title 18, United States Code.

4. It was further a part of said conspiracy that the defendants and their co-conspirators would and did, in a matter within the jurisdiction of a department and agency of the United States, to wit, the Federal Bureau of Investigation, United States Department of Justice, make false, fictitious and fraudulent statements and representations and make and use false writings and documents knowing the same to contain false, fictitious and fraudulent statements.

5. It was further a part of said conspiracy that the defendants and their co-conspirators would and did corruptly influence, obstruct and impede and endeavor to influence, obstruct and impede the due administration of justice and wilfully endeavor by means of misrepresentation to obstruct, delay and prevent the communication of information relating to violations of Sections 201, 203 and 371 of Title 18, United States Code, by persons to federal criminal investigators.

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6. It was further a part of said conspiracy that the defendants and their co-conspirators would knowingly make false material declarations under oath before a Federal Grand Jury.

OVERT ACTS

In furtherance of said conspiracy, and to effect the objects thereof, the defendants committed the following overt acts, among others, in the Southern District of New York and elsewhere:

1. On or about October 24, 1969 the defendant HERBERT S. PODELL wrote a letter to Robert Palmer, Esq., 66 West Flagler Street, Miami, Florida 33130.

2. On or about December 6, 1971 the defendant HERBERT S. PODELL made statements to Special Agents of the Federal Bureau of Investigation in New York, New York.

3. On or about December 8, 1971 the defendant BERTRAM L. PODELL made statements to Special Agents of the Federal Bureau of Investigation in Washington, D.C.

4. In or about December, 1971 the defendant BERTRAM L. PODELL met with the defendant MARTIN MILLER in Miami, Florida.

5. On or about January 10, 1972 the defendant BERTRAM L. PODELL made statements to Special Agents of the Federal Bureau of Investigation in New York, New York.

6. On or about April 18, 1972 the defendant BERTRAM L. PODELL made statements to Special Agents of the Federal Bureau of Investigation in Washington, D.C.

7. On or about April 25, 1972 the defendant MARTIN MILLER made statements to Special Agents of the Federal Bureau of Investigation in Miami, Florida.

8. On or about June 22, 1972 the defendant BERTRAM L. PODELL signed a statement in Washington, D.C.

9. On or about May 4, 1973 the defendant BERTRAM L. PODELL appeared and testified before a United States Grand Jury in New York, New York.

10. On or about May 4, 1973 the defendant BERTRAM L. PODELL met with the defendant MARTIN MILLER in Miami, Florida.

(Title 18, United States Code, Section 371.)

COUNT EIGHT

The Grand Jury further charges:

On or about December 6, 1971, in the Southern District of New York, HERBERT S. PODELL, the defendant, in a matter within the jurisdiction of a department and agency of the United States, namely, the Federal Bureau of Investigation, United States Department of Justice, unlawfully, wilfully and knowingly did make false, fictitious and fraudulent statements and representations to Special Agents of the Federal Bureau of Investigation, to the effect: (1) that his law firm, Podell and Podell, performed no services and did no work with regard to LCI's or FAAL's attempt to obtain a route 9 designation; (2) that BERTRAM L. PODELL, his brother and law partner, was involved in only one transaction for Podell and Podell with LCI and that involved one trip by BERTRAM L. PODELL to the Bahamas at the end of 1968 solely to indroduce representatives of LCI to some individuals in the Bahamas; (3) that he, the defendant HERBERT S. PODELL, handled most of the matters for LCI; (4) that he and his law firm performed legal services involving strictly "local" matters for LCI not related to LCI's or FAAL's attempt to obtain a route 9 designation; (5) that the services rendered under a $1,000 per month retainer agreement between LCI and the law firm of Podell and Podell did not involve any services

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or representation before any federal agency; (6) that he doubted that BERTRAM L. PODELL knew about Podell and Podell's monthly bills to LCI; (7) that he had no knowledge of BERTRAM L. PODELL's contacting any government agency or officials on behalf of LCI; (8) that no bills were sent by the law firm of Podell and Podell to LCI for any contacts with any government agencies; (9) that the March 1, 1969 Podell and Podell bill to LCI for $2,350 was for a trip taken by the defendant HERBERT S. PODELL's father, Hyman Podell, to Puerto Rico on behalf of Kenneth G. Burnstine, and (10) that the allegations in the October 17, 1969 letter from Robert M. Palmer to J. N. Coker, an FAA employee, that LCI had retained Congressman BERTRAM L. PODELL were absolutely untrue, when, as the defendant then and there well knew, said statements were false.

(Title 18, United States Code, Sectinn 1001).

COUNT NINE

The Grand Jury further charges:

On or about January 10, 1972, in the Southern District of New York, BERTRAM L. PODELL, the defendant, in a matter within the jurisdiction of a department and agency of the United States, to wit, the Federal Bureau of Investigation, United States Department of Justice, unlawfully, wilfully and knowingly did make false, fictitious and fraudulent statements and representations to Special Agents of the Federal Bureau of Investigation, to the effect: (1) that when he was elected to Congress in February 1968, he set up with his brother and father two separate law firms styled Podell and Podell, one of which did not include the defendant BERTRAM L. PODELL as

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a partner; (2) that the parties to the $1,000 per month retainer agreement were LCI and the Podell and Podell law firm of which the defendant BERTRAM L. PODELL was not a member and, he, the defendant BERTRAM L. PODELL, had nothing to do with the retainer agreement and the services performed under this retainer agreement; (3) that he travelled to the Bahamas near the end of 1968 to introduce MARTIN MILLER and others to one George Kates in connection with a "promotion gimmick" for LCI; (4) that at the time of this trip he was not aware of FAAL and the trip had nothing to do with FAAL; (5) that during this trip he told MARTIN MILLER that MILLER had to discuss any retainer agreement with HERBERT S. PODELL; (6) that any contacts he, the defendant BERTRAM L. PODELL, had with the CAB, CAB officials or other government officials were contacts had because of friendship for a constituent, that he received no money or fees for these services, that they were not performed at a time when he represented LCI, and that neither he nor his law firm received any fees during the time of these contacts; and (7) that a March, 1969 Podell and Podell bill to LCI for $2,350 contained a $1,000 charge for a trip to Puerto Rico taken by Hyman Podell, when as the defendant then and there well knew, said statements were false.

(Title 18, United States Code, Section 1001).

COUNT TEN

1. On or about May 4, 1973, in the Southern District of New York, BERTRAM L. PODELL, the defendant, having duly taken an oath as a witness that he would testify truthfully before a Grand Jury of the United States of America, duly impaneled and sworn in the United States District Court for the Southern District of New York, and inquiring for that District, unlawfully, wilfully and knowingly and contrary to said oath did make false material declarations to said Grand Jury.

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2. At the time and place aforesaid, the said Grand Jury was conducting an investigation, pursuant to Sections 2, 201, 203, 371 and 1001 of Title 18, United States Code, to determine whether payments made by LCI and FAAL to the law firm of Podell and Podell constituted direct and indirect payments to, and receipts by, the defendant BERTRAM L. PODELL of bribes and constituted a conflict of interest and a conspiracy to defraud the United States, and to determine whether the defendant BERTRAM L. PODELL and others had agreed to conceal and misrepresent, and in fact concealed and misrepresented, the reasons for these payments in their statements to the Federal Bureau of Investigation and to others.

3. It was material to said inquiry to ascertain whether the statements made by the defendant BERTRAM L. PODELL to various agents of the Federal Bureau of Investigation, and to others, completely and truthfully explained the reasons for his services on behalf of LCI and FAAL and the reasons for the money, fees, and other things of value, solicited and received by him and his law firm, Podell and Podell, from LCI and FAAL.

4. At the time and place aforesaid BERTRAM L. PODELL, the defendant, appearing as a witness under oath did testify falsely with respect to the aforesaid material matters as follows:

> Q. But I also want to tell you that we would also weigh very heavily your answers to these questions.
>
> A. Will you advise the Grand Jury that I have made a complete and full statement

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after three meetings with the Federal Bureau of Investigation some two years ago giving them all of the information they want? I willingly signed the statement. You would further advise the Grand Jury that my office was made available to them. That my staff was made available to them.

* * * * *

Q. With reference to your statement that you brought up, Congressman Podell, is the statement that you made to the FBI a truthful statement?

A. Mr. Giuliani, I always tell the truth. Or at least as best as I possible can I always intend to tell the truth.

Q. Were the statements you made to the FBI truthful statements, to the best of your ability, at the time you made them?

A. If I have made a statement I can assure you, Mr. Giuliani, it is the truth.

* * * * *

THE WITNESS: I want to thank the Foreman and the U. S. Attorney for allowing me to read the statement. And the Grand Jury for listening to it.

About one and a half years ago I was interviewed by the Federal Bureau of Investigation on numerous occasions in connection with a matter that occurred in December of 1968.

I provided that Bureau with full and complete information in a statement which I willingly signed. That statement is before this jury. It contains the full, the complete and the entire story.

* * * * *

RWG:nc

Q. Let me ask you this since you have told us about that statement. Is that statement that you gave to the FBI truthful?

A. Every statement that I have ever made has been truthful?

Q. Every statement you ever made to the FBI has been truthful?

A. To anyone.

Q. That would include the FBI?

A. To anyone and everyone is truthful.

Q. I take it that includes the statement you made to the Federal Bureau of Investigation?

A. Of course.

Q. The answer is yes?

A. The answer is, of course.

(Title 18, United States Code, Section 1623).

/s/ Richard Eldridge
Foreman

Paul J. Curran
PAUL J. CURRAN
United States Attorney

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By
Deputy Clerk

EXHIBIT C TO RULE 9(g) STATEMENT

VOL 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

BERTRAM L. PODELL and
MARTIN MILLER,

Defendants.

Before:
HON. ROBERT L. CARTER,
District Judge
and a Jury

~~73 CRIM. 765~~
73 Cr. 675

New York, September 27,30, 1974
October 1, 1974

1 3 1974
S. D. OF N. Y.

STENOGRAPHER'S MINUTES

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AFTERNOON SESSION

4;10 P.M.

MR. LaROSSA: May it please the Court, on behalf of the defendant Bertram Podell, he hereby offers to plead guilty to certain portions of the first count of the indictment, namely the first full paragraph on page2, eliminating the Herbert Podell, eliminating Section 201 of Title 18, and eliminating the Department of State.

In addition to that paragraph I am referring now to the means paragraph on page 4 of the indictment, the defendant's plea will cover 5B, again eliminating the Department of State; 5C, eliminating the words "directly and" on the third line of that paragraph; eliminating the name of Herbert Podell throughout the paragraph -- it appears in two instances -- and the last full line of that section; paragraph 5A is to be eliminated as well.

In addition to that, the defendant offers to plead guilty to count 5 of the indictment, again eliminating the Department of State and Herbert Podell.

THE COURT: Is he mentioned there?

MR. GIULIANI: Page 10, your Honor, the bottom.

May I make a statement for the government, your Honor?

THE COURT: Yes.

Would you defer your statement for the government until after I ask the questions of Mr. Podell?

MR. GIULIANI: Fine. It makes no difference.

THE COURT: Mr. Podell, you have heard what Mr. LaRossa said, and what I have to ascertain is what he has indicated you are pleading guilty to; are you, infact, doing that?

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DEFENDANT PODELL: Sir, I'm sorry?

THE COURT: I'm sorry too.

Mr. LaRossa, your counsel, has indicated that you are pleading guilty to certain counts of the indictment with certain deletions. I want to know whether that is, in fact, true, whether you are in fact doing that.

DEFENDANT PODELL: Yes, I am.

THE COURT: I suppose I don't have to go through the usual litany with you, but I do have to make sure on the record that your plea is being made freely and voluntarily. I am going to ask you a few questions in that regard.

First, you are making this plea, you are changing your plea, after these few days of trial, voluntarily, of your own free will?

DEFENDANT PODELL: Yes.

THE COURT: There has been no coercion by the government and no promises by your counsel; is that correct?

DEFENDANT PODELL: That's correct.

THE COURT: You discussed the matter thoroughly, I gather, with Mr. LaRossa, and you are satisfied with the advice he has given you in regard to what your rights are; is that correct?

DEFENDANT PODELL: Yes, your Honor.

THE COURT: You were on the witness [illegible] earlier, so I am confident that you are fully aware of what was going on and what is going on at the present time. You are of sound mind and everything else, so that you know what is going on. There is no problem about that?

DEFENDANT PODELL: Yes, your Honor.

X THE COURT: Nor do I have to go into the problem of what you are foregoing since you realize that in view of the fact that we are now aborting the trial you are foregoing your right to trial by making this plea.

I think that is sufficient.

O What I would like to hear from you, tell me in your own words what it is you did in respect to the counts you are pleading guilty to so I can be satisfied that you are, in fact, guilty.

DEFENDANT PODELL: If the Court pleases, while a member of Congress and acting as a lawyer for Florida Atlantic Airlines and paid by Leasing Consultants, Inc., I appeared before various federal agencies, including the CAB, the FAA, and advocated the interests of the said Florida Atlantic Airlines.

I was indirectly compensated through my law firm for these appearances before the CAB and the FAA while a member of Congress.

I did not at the time know that I was violating any law, but I intended to do what I did.

THE COURT: I will accept the plea.

MR. LaROSSA: I think Mr. Giuliani's statement should be read in conjunction with your acceptance of the plea, your Honor. It defines the limits.

MR. GIULIANI: Your Honor, the government is agreeable to taking the plea to count 1, the conspiracy count, and count 5, the conflict of interest count.

It is the government's view that a plea to count 1 encompassing paragraphs 1 and 5B and C, and to count 5 satisfies the interests of justice in this case.

It is the government's position that the plea to the conspiracy count admits that the object of this conspiracy was to violate the conflict of interest law and thereby to defraud the United States.

The government also understands that the defendant is not in any way admitting the bribery objects of the conspiracy. He is admitting the conflict of interest and the defrauding to the extent that it is meant by "conflict of interest."

The two statutes carry maximum penalties of five years and $10,000 on the conspiracy count, and two years and $10,000 under the conflict of interest statute, for a total of seven years and $20,000 maximum.

The government feels that the interest of justice is satisfied by taking the plea.

THE COURT: I have already indicated I will accept the plea.

Is there anything further?

MR. GIULIANI: There is one other thing with respect to describing the penalty.

Also the conflict of interest law disqualifies an individual from any federal service. That's a penalty that has been prescribed in 203.

MR. LaROSSA: In that regard it is important to the defendant to place the date of sentence some time after the 1st day of January, 1975, which I think the b3 normal realm of probation --

THE COURT: I have no problem with that.

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One thing more. I suppose I ought to put this on the record, Mr. Podell, and that is that the maximum penalty to which you will subject yourself by the plea, I am sure you were aware of that before you pleaded guilty?

DEFENDANT PODELL: Yes, your Honor.

THE COURT: What is an agreeable date? I have no problem about that.

MR. LaROSSA: Some time towards the latter part of the first week in January, if the Court please.

THE COURT: How is January 9th?

MR. LaROSSA: Fine, your Honor.

THE COURT: at 9:30.

MR. LaROSSA: Yes, sir.

THE COURT: Is there anything further?

MR. GIULIANI: Nothing further other than with regard to Mr. Miller, your Honor.

MR. MARX: May it please the Court, at this time I would like to offer to withdraw the plea of not guilty on behalf of the defendant Martin Miller and offer to plead guilty to count 1 of the indictment as it pertains to the conspiracy to commit conflict of interest as was outlined by Mr. LaRossa as those portions of that count apply to Mr. Miller. That would include the conspiracy to defraud as well as to commit conflict of interest. It is the same plea as to count 1 as the defendant Podell entered.

THE COURT: That's it?

MR. MARX: That's it.

THE COURT: Mr. Miller, I think I am going to have to ask you a few more questions than I was required to ask the congressman.

First, I would like to know your age and your education.

DEFENDANT MILLER: I am 34, your Honor, and I have had a number of years of college.

THE COURT: Since you have not been on the witness stand I will have to ask you the next question: Are you in sound physical and mental health at the present time?

DEFENDANT MILLER: Yes, your Honor.

THE COURT: You are aware of what is going on?

DEFENDANT MILLER: Yes, sir.

THE COURT: You are changing your plea of your own free will and accord?

DEFENDANT MILLER: Yes, sir.

THE COURT: Without regard to any pressures that have been brought on you or threats by the government or promises by your attorney?

DEFENDANT MILLER: Yes, sir.

THE COURT: You obviously realize that if you had not pleaded guilty the government would be required to convince 12 people on this jury of your guilt beyond a reasonable doubt and that you are foregoing that by pleading guilty? Do you understand that?

DEFENDANT MILLER: Yes, sir.

THE COURT: Am I correct it is five years, the maximum penalty, for what you are pleading to and $10,000 fine?

MR. GIULIANI: Yes, your Honor.

THE COURT: Did you understand that?

DEFENDANT MILLER: Yes, sir.

THE COURT: You have gone over this matter with Mr. Marx and have discussed it thoroughly with him, and you are satisfied with the advice he has given you?

DEFENDANT MILLER: Yes, sir.

THE COURT: I will ask you to tell me in your own words what you did which indicates that you are, in fact, guilty of count 1.

DEFENDANT MILLER: Your Honor, Congressman Podell was introduced to me as a congressman-attorney by Melvin Heiko. I, on behalf of Leasing Consultants, Inc. retained him for his influence. At the time I had no knowledge that I violated any of the laws of the United States. I understand now that I did.

THE COURT: But you did what you did knowingly and intentionally; is that correct?

DEFENDANT MILLER: Yes, sir.

THE COURT: Do you have anything to say?

MR. GIULIANI: Just basically the same statement that we made with regard to Mr. Podell: The Government is agreeable to taking this plea to the conspiracy count. We understand it to be a plea to conspiracy to violate the conflict of interest section and to defraud the United States, and not a plea to conspire to pay a bribe.

THE COURT: All right. Mr. Miller, I will accept the plea.

MR. MARX: Thank you, your Honor.

THE COURT: What is your convenience for sentence?

MR. MARX: I think the same date.

THE COURT: January 9th, the same time.

Wait a moment. Sentencing has become a longer process. I will probably be on trial at that time. I think I better take just one.

I would suggest January 7th at 9:30.

MR. JAFFE: Your Honor, just as a matter for the record, does your Honor, as a normal practice having concluded with each defendant, thereafter take the plea formally on the record or is it sufficient as it stands?

THE COURT: I think it is on the record. I think it is very clear. It is on the record. I don't think there is any problem about it. Both Mr. Podell and Mr. Miller have indicated in their own words that they are pleading guilty.

MR.JAFFE: Very well, your Honor.

MR. GIULIANI: As far as bail is concerned, both defendants are released on their own recognizance. We have no objection to that.

THE COURT: You have no objection to Mr. Miller returning to his home in Miami?

MR. GIULIANI: No, your Honor.

THE COURT: Let's get the jury in here.

(Jury in box.)

THE COURT: Ladies and gentlemen, the delay has been because of some developments in this case, and I am able to advise you that the case has been concluded. The jury will not have to make a decision in that.

I want to thank you for your attentiveness, for your promptness in being here, for your attention to the trial.

I want to say that you have served a useful purpos a very important purpose, as citizens. The court appreciat it.

You are now relieved and may go home.

As to your notes, you can either leave them or take them with you, since they will be of no use.

If there is nothing further, gentlemen, we will adjourn.

(Time noted: 4:30 P.M.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Bertram L. Podell (Resumed)		1339 1390		
Sebastian Leone	1388	1389		

EXHIBIT INDEX

Government	Identification	In Evidence
61	1410	1411
62	1412	1413
63	1416	1417
63-A	1416	1417
63-B	1417	1419
63-C	1417	1419

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RAYMOND F. BURGHARDT, Clerk

By
Deputy Clerk

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EXHIBIT D TO RULE 9(g) STATEMENT

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LEASING CONSULTANT, INC. NO. 1931 67
SPECIAL ACCOUNT

PAY TO THE ORDER OF Podell + Podell

Jan. 7 1969

1-8/210

$10,000.00

THE SUM OF 10000 DOLS 00 CTS DOLLARS

FIRST NATIONAL CITY BANK
95-12 63RD RD. NR. QUEENS BLVD.
REGO PARK, N. Y. 11374

Miller, Pres
Edward J. Weinstein Esq

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PODELL & PODELL

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EXHIBIT E TO RULE 9(g) STATEMENT

FOR DEPOSIT ONLY
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95-20 63RD ROAD
FOREST HILLS, N. Y. 11375

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PAY TO THE ORDER OF Podell & Podell $2350.00/100

THE SUM OF 2350 DOLS 00 CTS DOLLARS

MAR 13 1969

LEASING CONSULTANTS INC.

FIRST NATIONAL CITY BANK
MANHATTAN AVE. AT NOBLE ST.
BROOKLYN, N.Y.

Ernest Miller, Pr
Robert I Kayne VP

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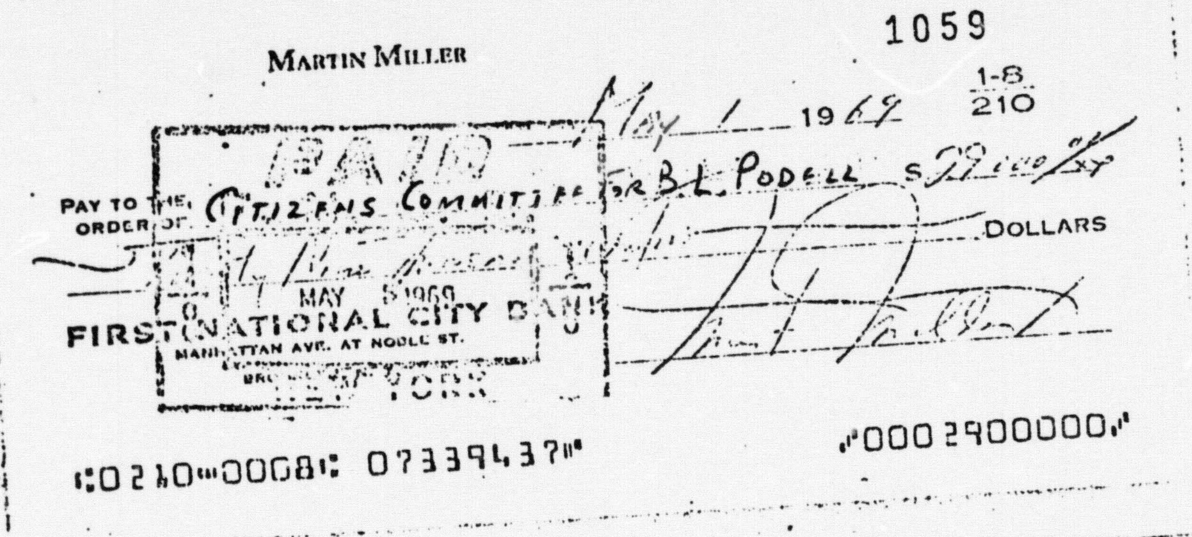
EXHIBIT F TO RULE 9(g) STATEMENT



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MARTIN MILLER

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PAY TO THE ORDER OF Citizens Committee for B.L. Podell $29 000/xx

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MANHATTAN AVE. AT NOBLE ST.
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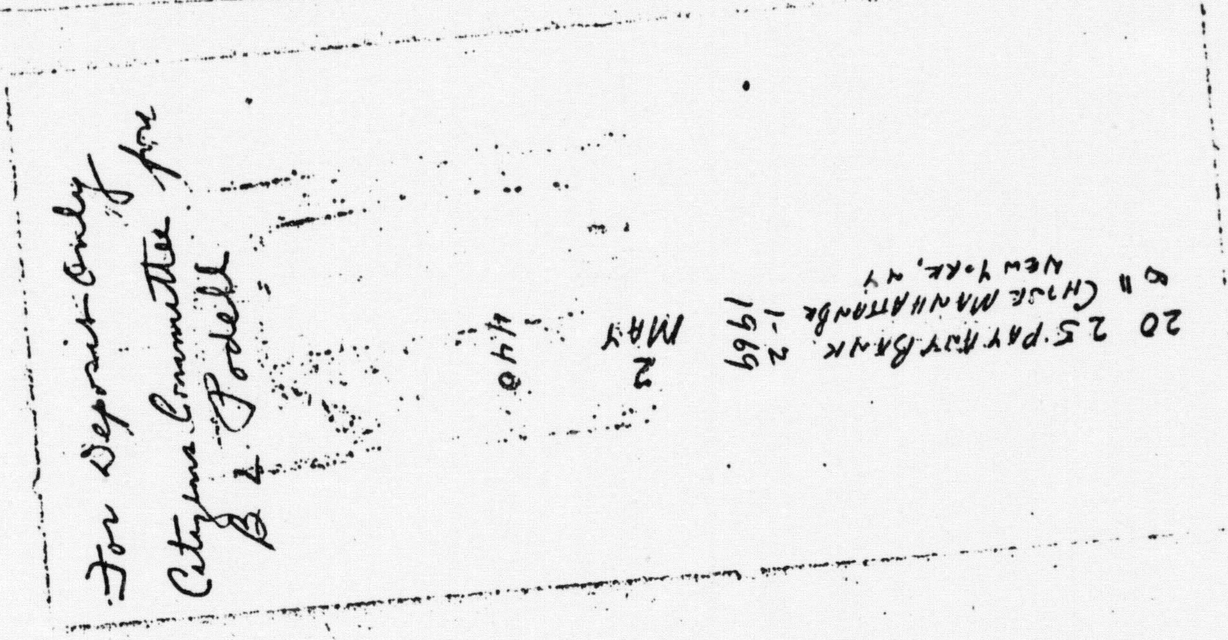

For Deposit Only
Citizens Committee for
B L Podell

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EXHIBIT G TO RULE 9(g) STATEMENT

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

v. : 73 Cr. 675

MARTIN MILLER, :

Defendant. :

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New York, New York
November 12, 1973 - 10:00 a.m.

BEFORE:

HON. ROBERT L. CARTER,

District Judge.

APPEARANCES:

PAUL J. CURRAN, Esq.,
United States Attorney for the Southern
District of New York;
By: RUDOLPH GIULIANI, Esq.,
JOSEPH JAFFE, Esq., and
EDWARD J. KURIANSKY, Esq.,
Assistant United States Attorneys, of Counsel.

RABIN & SILVERMAN, Esqs.,
Attorneys for Defendant;
By: I. STEPHEN RABIN, Esq., of Counsel.

to the affidavit.

I'm sorry. I didn't mean to cut you off.

MR. KURIANSKY: No, that is all, your Honor.

THE COURT: All right.

Thank you, Mr. Rabin.

(Witness excused.)

THE COURT: All right. Anything else, Mr. Rabin?

MR. RABIN: No. We are finished, your Honor.

THE COURT: All right.

MR. KURIANSKY: The Government calls Mr. Giuliani.

RUDOLPH W. GIULIANI,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KURIANSKY:

Q Mr. Giuliani, what is your profession?

A I am an attorney.

Q And when were you admitted to the bar?

A 1968.

Q Briefly, since your admission, how have you been employed?

A When I graduated from law school, I for two years was employed as a law clerk for the Honorable

Lloyd F. MacMahon, United States District Judge in the Southern District of New York.

In 1970 I joined the staff of the United States Attorney's office, and I was assigned to the Criminal Division.

Q And what is your present position?

A I am chief of the Official Corruption Unit of the United States Attorney's office.

Q Now, in your capacity as an Assistant United States Attorney, did there come a time when you were assigned to handle the investigation of a case involving Mr. Podell and Mr. Martin Miller?

A Yes, sir.

Q And about when was that?

A That was approximately in April of this year.

Q And did you thereafter have occasion to meet Mr. Martin Miller?

A Yes, I did.

Q Do you recall about when that was?

A I met Martin Miller, my best recollection is, on May 9, 1973.

Q And at that time did you advise him of his constitutional rights?

A Yes, I did.

Q And thereafter did Mr. Miller testify in the United States grand jury?

A Mr. Miller testified on several occasions. First, I think, on May 10th; then again on May 18th, both in the morning and the afternoon.

Q Did you warn him again of his rights on each of those occasions?

A Either myself or Mr. Jaffe on each occasion that he appeared in the grand jury warned Mr. Miller of his constitutional rights, and I think went well beyond the required warnings, particularly in the area of perjury, as the minutes will reveal.

Q In substance, did Mr. Miller testify in the grand jury and admit to making certain payments to Congressman Podell?

A He first denied it -- on a number of occasions.

MR. RABIN: I object to that. We are getting into the crime alleged, and you know we are not trying that.

THE COURT: I don't think -- I think what Mr. Kuriansky is trying to establish, and I think he has a right to do that, he's trying to establish the way in which Mr. Giuliani and Mr. Jaffe treated Mr. Miller, to indicate that they were attempting to treat him fairly on those occasions and I gather throughout.

I think they have a right to do that. That is part of the case -- apparently there was a misunderstanding among the four of you, and part of the case has to be the intention, the method in which each of you were dealing with one another, whether you were attempting to do it in good faith. I gather this is what he is attempting to do. He's entitled to.

Q Mr. Giuliani, did you finish your answer? I'm sorry.

A No.

As I said, when Mr. Miller first came in to my office, and Mr. Jaffe and I interviewed him, he vehemently denied that he had made any payments of any kind to Congressman Podell with relation to getting an airline route from the CAB or from the United States Government. And without going into all the details of that, Mr. Miller's position was that he had never made any payments like that to Congressman Podell for the purpose, or in any way for the purpose of obtaining an airline route.

When he first appeared in the grand jury on May 10, 1973, I gave him the usual target warnings, Miranda warnings, and I'd say a much lengthier description of the necessity for telling the truth under oath and the consequences of lying before a grand jury.

Mr. Miller then went ahead and testified differently than he had told us in our office, and in fact surpirsed us with the answers that he gave. We went through questioning him on the 10th, not in detail, but just generally, and then asked the grand jury to adjourn his appearance, and had subsequent discussions with him between the 10th and I think he appeared again on the 11th, and it was adjourned in the grand jury on the 11th, and had a number of discussions with him between that first appearance and his later appearance on the 18th, in order to see if we could get the details of what now was a new version of the events, or, at least, a version of the events that we hand't heard before.

All throughout that time, Mr. Miller was told often -- I can't remember if it was each time that we talked to him -- that he had a right to counsel. He often asked me, "Do you think I should get a lawyer?" and I told him that that was his decision, that I wasn't his lawyer, that by the nature of the system, I couldn't be his lawyer, and that if he wanted to, he should go ahead and get an attorney, and we would be more than happy to deal with his attorney and him together. He said he didn't think he needed a lawyer because he thought he was being treated fairly, and Itold him and Mr. Jaffe told him, and I think Mr. Passaretti told him that if he felt he needed a lawyer he should just go out and get one, and he kept saying that he didn't.

Q Now, during this period, this May period, did you have any conversations with Mr. Miller on the subject of his cooperation?

A Well, I probably had more than one, but the one I distinctly remember is after he testified for the last time in the grand jury, on May 18th, he came back down to my office -- I am not exactly sure who else was present. Mr. Miller was there and I was there. Mr. Jaffe may have been there. Mr. Passaretti, I think, was there at least for part of the conversation

Mr. Miller asked me if he was going to be indicted. I told him that in all probability he would be indicted, although the investigation was not at an end, and that those decisions are made by the grand jury. He said that he had some -- he was involved in a new business, or a new financial venture, with a number of people, and that if he was going to be indicted, should he tell them about it beforehand? I told him that I couldn't advise him on whether he should or shouldn't tell them, that that was really his decision to make.

He said, "Well, should I tell them now that I am going to be indicted, because I would want to give them an opportunity to allow me to pull out of the deal if there is going to be unfavorable publicity?"

Either myself or Mr. Passaretti told him that in all likelihood he would be indicted, and that he had to just guide himself accordingly.

He said, "Well, about how long a period of time is this all going to take?"

I told him that the investigation was going to go on certainly for the next couple of weeks, probably even a month. And he either asked or I suggested, I am not really certain how this came up, that, well, the net result of it was that I told Mr. Miller that we would call him a short time before the investigation commenced.

Q Concluded?

A Investigation ended, I'm sorry.

And that we would inform him then of just where we were, and allow him to come up with a lawyer to discuss his position one more time with us.

He said, "Well, okay," he would accept that and he'd be awaiting my call.

And that is all I remember about it at that time.

Q And did he thank you for anything?

A Mr. Miller thanked myself and Mr. Passaretti many times and said to us that the time that I had spent with him and that Mr. Passaretti had spent with him prior to his testifying for the first time in the grand jury, he really appreciated that, because he didn't know what he was going to do. He was intending to commit perjury. He knew that that would probably get him in more trouble, and he really appreciated the fact that we sat down with him and spent a lot of time with him talking about where he was, and what position he was in, or he might have gone ahead and gotten himself into more trouble.

Q Did you ever tell him during this conversation that he wouldn't be indicted because his intent was different from that of Congressman Podell?

A I never told him that he wouldn't be indicted because his intent was different than Congressman Podell.

I did say something about intent. A couple of times he would say to me that he didn't understand the conflict of interest statute. He didn't know about that statute. And I at that time discussed with him, although I don't remember the details of the conversation, the fact that a Congressman would be more aware of something like that than you would be, since they're generally instructed on the law as governing their conduct as representatives in the House of Representatives.

Q Now, at this same time, did you, yourself, make, or did you learn of any other commitments that had been made to Mr. Miller?

A Frankly, I am not exactly sure when I learned about that commitment. I did learn at some time between the time that it was first made and the time that I sat down and spoke to Mr.Rabin and Mr. Miller that Mr. Jaffe had told Mr. Miller that he would not be prosecuted for making false statements to the FBI in the Southern District of New York, that he would not be prosecuted in the Southern District of New York for making false statements to the FBI.

THE COURT: Mr. Jaffe made that promise to him?

THE WITNESS: That is right.

Q Now, directing your attention to June 21st of this year, did you have occasion to speak to Mr. Miller on the phone?

A On or about that day, I called his office, the number he had given me for his office in Miami, I think it is, and I left a message for him to return my call. He wasn't in.

He either returned my call or I called him back again later in the day, and I told Mr. Miller that the investigation was coming to a close, that the grand jury was in a position where they'd be considering indictments, and that I wanted to call him as I had agreed to do, to tell him to come up with an attorney to discuss his position with us.

He said that -- he said, "When do you want me to come up?"

I said, "Well, if you can, come up right away."

He said, "Okay, I will come up tomorrow." And then he said that he didn't need an attorney, he didn't think he needed an attorney because of the prior dealings with us; he felt that it wouldn't be necessary to go through the expense of getting an attorney, or to the bother of getting an attorney, something like that. And I told him that I thought that he should be represented by an attorney, that I couldn't be in the position of advising him as to what to do, that some decisions had to be made on just what he was going to plead to, and that he should have the advice of an attorney in order to do that.

He said, well, if he had to get an attorney, he would need more time tomorrow, which would be Friday. And I said, "Fine, you have your attorney contact me." He said he would do that as soon as he could and that ended the conversation.

Q Did you thereafter hear from an attorney for Mr. Miller?

A On June 25th, which is a Monday, I either received a call and spoke to Mr. Rabin personally, or I received a message that he had called. I'm not really clear on it. But I found out on June 25th that Mr. Rabin was going to represent Mr. Miller and that Mr. Miller and Mr. Rabin would be coming in the next morning at approximately 9:30.

Q Did you in fact meet with Mr.Rabin the next morning?

A Yes, I did.

Q We are now at June 26, 1973, is that right?

A That is right.

Q Who was present at this meeting, to the best of your recollection?

A Mr. Jaffe, myself, at the beginning of the meeting, well, Mr. Rabin throughout the meeting, and at the beginning, Mr. Miller.

Q And would you tell us who said what to whom at that time?

A After introductions and some general conversation with Mr. Miller about how he was doing and that kind of thing, I told Mr. Rabin that Mr. Miller had testified in the grand jury extensively on his involvement with Congressman Podell, that he had basically admitted the violation of a number of Federal laws, and that the Government was going to take the position that he had cooperated, but that I wanted to make clear what our eventual position was going to be, that we would allow him, in return for the cooperation that he has given us, to plead to less than all the counts that would involve him; and that we would, of course, make known to a Judge, who would sentence him, the full nature of his cooperation.

Either myself or Mr. Jaffe, and I am not quite certain which one of us, then told Mr. Rabin that in all candor, it was our position that Mr. Miller had not been totally honest and had not told us the complete truth about this for two reasons: One, the testimony of other witnesses; and, two, just some general conclusions that we were able to draw from having gone through a fairly extensive investigation of the case.

Q And during this conversation, did you also repeat for Mr. Rabin's benefit the commitment you had made concerning not indicting him in this District for false statements and giving him advance notice that the indictment would be coming down?

A I think I did. I think it might be possible that Mr. Jaffe did. It's possible that we both did. I think it most certainly was said by one of us that we were not going to indict Mr. Miller for having made false statements to the FBI.

Q And how did this meeting conclude?

A Mr. Rabin said that he had just come into the case and that at this point he really didn't know that much about what had happened previously and he would like a little more time to talk to his client about it.

We said that was fine, except that we had already given him four or five days, and that the grand jury was intending to act on this matter within about two or three days, so that if he could act as expeditiously as possible we would appreciate it. In fact, I think we impressed upon him that if he didn't we would just have to go ahead in the situation we were in; in other words, just go ahead and ask the grand jury to indict on the counts that we had in mind; and that the deal that we offered to him would be open, but that if there was anything else that could help Mr. Miller, if he didn't act quickly, it wasn't going to come to our attention.

And he said that he would act expeditiously and he'd be back in touch with us as soon as he was familiar with what was going on.

Q As of the conclusion of this meeting you had made it clear that Mr. Miller was going to be indicted; is that right?

A That is right.

Now, during that meeting, I just should say it to clear up the record, Mr. Miller was not present for a period of time during that meeting. I am not certain just what was said in Mr. Miller's presence and what was said outside his presence to Mr. Rabin.

Q But this was an attempt to familiarize Mr. Rabin with what had transpired up to that time, or was about to happen?

A That is right.

Q And I take it from your testimony that there was no discussion at this meeting concerning a new information being provided and what could be obtained in return for such new information?

A No, no discussion about that at this point at all.

Q Did you hear from Mr. Rabin again later that day, the 26th?

A My best recollection is that Mr. Rabin called Mr. Jaffe, and asked to see us sometime that same afternoon, and that he did come in with Mr. Miller. Mr. Miller, myself, Mr. Jaffe and Mr. Rabin sat down and discussed the situation again, in my office.

Q Was there anyone else present, to your recollection, at that meeting?

A I doubt it. There may have been. I am just not certain.

Q Is it possible Mr. Passaretti was there?

A It's possible, that is right, but I am not -- I'm sure those four people were there. I think Mr. Passaretti may have been there, but I am, myself, not certain that he was.

Q Now, would you tell us what the conversation was during this afternoon meeting on the 26th?

A Well, as I recall it, we first started off repeating what we had said earlier, basically what the Government's position was; that the Government would, in return for what Miller had done to date, allow him to plead to less than all the counts, and that we would, as we were bound to do, we would explain to the Court frankly what our position was on his cooperation, and point out to the Court what Mr. Miller had -- how Mr. Miller had helped the case, but also, by the same token, we would have to also point out to the Court where the evidence indicated Mr. Miller was either lying, misrepresenting or conveniently forgetting facts.

I think at this point I told him -- I'm sorry.

Mr. Rabin then said, "Could you be more specific? Could you point out areas where Miller might be lying or not telling the truth?"

And I said, well, to do that would really require my revealing a good deal of confidential testimony that was given in the grand jury. I can't do that, but I can give you maybe, rather than some of the specific things that were contradicted, I can give you some general impressions that myself and Mr. Jaffe have.

He said okay, and I said that we thought that part of Mr. Miller's story that he had paid so much money to Congressman Podell and had not received the airline route that he was seeking indicated to us that it was possible that maybe Congressman Podell was doing something else for Mr. Miller that required such large payments of money. I am not sure that Mr. Miller or Mr. Rabin replied to this. I have a faint recollection that Mr. Miller said, no, he had told us everything that Podell had done for him.

Then there was some other conversation, I am sure, but I just don't recall it, about insignificant things.

And then Mr. Rabin said that what he was interested in wasn't a plea at this point. There might some day come a time when he would be interested in discussing a plea. He wasn't rejecting that forever. But at this point what Mr. Miller was interested in was in not being indicted, that it would ruin him financially if he was indicted, and he was interested in not being indicted. I said to him that in light of the evidence that we had in the grand jury and Mr. Miller's own admissions, taking either one of them independently or together, it would just be impossible to even talk about no indictment. He said, well, he wasn't interested in no indictment. And then he said something to the effect that he had, not new information, but something like a bombshell or a devastating piece of information, or something that we would be very, very interested in, that would motivate us to change our positions. Those aren't the exact words, but it was something like that.

He said, however, in order to reveal this, he would want a commitment from us, a firm commitment that Mr. Miller would not be indicted. I once again said to him, and Mr. Jaffe said to him, after I finished, that under no circumstances could we discuss no indictment for Mr. Miller, that the evidence was overwhelming, that we just couldn't conscientiously even consider not indicting him.

Mr. Rabin said, well -- I'm sorry.

Then I said that Mr. Miller was in a position where it couldn't possibly hurt him to give us whatever that information was, that he was definitely going to be indicted, there just was no quesetion of that, that in fact we had already drafted a proposed indictment, and I think it was sitting, or a portion of it was sitting on my desk, and I pointed to it, and I said, "He is included in the indictment. He will be indicted. There is nothing he's going to gain by withholding this information, except one of these days if it comes out, he's going to probably be in more trouble with whatever Judge that has to sentence him if he's convicted, because he doesn't even" -- I think I also stated to him -- "he probably would wipe out the benefit of whatever cooperation he's given to date by doing that, because he'd be in the position of a defendant who cooperated to some extent but withheld what you claim is devastating evidence."

Mr. Rabin said he was in a dilemma -- I'm sorry. Before that, before Mr. Rabin said something about his being in a dilemma, Mr. Jaffe said pretty much the same thing I had said, and added that it would be impossible for us to even discuss realistically what could be done for Mr. Miller without knowing the information.

And I think he used a phrase that "we're not about to buy a pig in a poke."

Mr. Rabin then said that he was in a dilemma, that if he disclosed the information to us, then we could go out and corroborate it on our own, reveal it on our own, and then Mr. Miller would get no benefit from it.

So I said to him, "This problem comes up often in negotiations with cooperating co-defendants. It comes up often with their lawyers. Generally, the way it can be -- we can overcome that dilemma is to have you disclose to us in a hypothetical way, off the record, generally what the information is about. Then we can give you some idea of how valuable or invaluable it would be to us, and whether we'd be willing to re-evaluate our position in light of that information."

I said that if we did that, of course, we would be bound not to use that information against Mr. Miller, and he couldn't be hurt by it.

Mr. Rabin said -- Mr. Rabin either talked to Mr. Miller at that point -- I think in my office, I think he leaned over and had a conversation with him, and then said that he was not about to accept that offer. He gave some reason for it. I don't remember what the reason was that he didn't want to accept it, something to the effect that he had to check our office out, or check out Mr. Jaffe and myself before he continued with these negotiations, and they entered a stage like this, something like that. Those are certainly not the exact words, but it was something like that.

But he said that he could not accept any offer that didn't include a firm commitment on the part of the Government not to indict Mr. Miller. I told him that that kind of thing was totally out of the ballpark, that we weren't about to not go ahead with Mr. Miller's indictment for any reason, and that he just had to lower his sights to something else, that Mr. Miller was going to be indicted.

He said, well, he had this important information, this important evidence, and he was not going to disclose it until we committed ourselves to not indict Mr. Miller.

Mr. Jaffe and myself both told him that it was silly to go forward with this conversation, that we just weren't getting anywhere, we were going to go ahead as we planned to indict Mr. Miller, and that if he changed his mind in time, he could call us.

And we broke off with the negotiations at that point. I think Mr. Rabin said something about he was going to check us out with some criminal lawyers or lawyers with criminal experience, and we said, "Fine, go ahead and do that.

But the result of that conversation was that all negotiations were broken off in our minds, and we were going to go ahead and indict him as we had planned, unless Mr. Rabin contacted us before the date that we had proposed for asking the grand jury to indict him.

Q So, in other words, during this conversation you had proposed to solve this dilemma that Mr. Rabin or Mr. Miller tell you about the new information off the record and that it wouldn't be used against him, but that that offer was declined by Mr. Rabin as of this time; is that right?

A Absolutely, that is right.

THE COURT: Where was Mr. Miller during this period of time, Mr. Giuliani?

THE WITNESS: Mr. Miller was present during all of that conversation except maybe there might have been an occasional time when he walked out to take a glass of water, or go to the men's room. That is true of everyone.

There were times, I guess, when it would be somewhat inaccurate to say everyone was present throughout the entire meeting. There were times when someone would go out to get water or go to the men's room.

THE COURT: I see.

Q Now, directing your attention to the following day, June 27, 1973, did you hear from Mr. Rabin again?

A Mr. Jaffe did. Mr. Rabin called Mr. Jaffe and asked to see us again, to sit down and talk about this situation. Mr. Jaffe set an appointment with Mr. Rabin for the afternoon of June 27th.

Q And at about 4:00 o'clock that afternoon did you meet again with Mr. Rabin and Mr. Miller?

A That is right. That was the approximate time of the meeting.

Q Who was present at this meeting?

A Myself, Mr. Jaffe, Mr. Rabin, Mr. Miller, and again I can't be absolutely certain there was no one else present, but my best recollection is that there was no one else present. Mr. Mukasey might have been present during a small portion of that meeting, although I don't remember what portions.

Q Tell us about the conversation that ensued in this afternoon meeting on the 27th of June.

A The conversation began, as I recall it, with

Mr. Rabin saying, repeating once again his position, where he was, that he was not going to turn over information to us without any firm, without a firm guarantee that there would be no indictment. I once again said to him that that just wasn't going to happen here, that this was the kind of a case where, and the evidence was such that the Government was not, regardless of what the information was, going to not indict Mr. Miller.

Mr. Rabin said, "Well, I have heard of situations where co-defendants have not been indicted based on the information they have given as to other defendants, no matter how guilty they were." And I said that in my experience there were situations where co-conspirators or people involved in crimes were not indicted based on -- were not indicted based on information they had given, assistance they had given to the Government. But I said that this, the way I saw it, at least, this wasn't the kind of a thing we were talking about with Miller.

I hypothetically related a situation involving an investigation that I had just completed and told him that there are situations where a defendant gives away, or a person involved in a crime gives away information not about the crime in which the Government knows he's involved but other crimes, goes out and builds up other cases of those involved in crime, and that in those situations, even in those situations sometimes those defendants are prosecuted and, in fact, in the situation that I was thinking of, the defendant was prosecuted. But that that is the kind of thing that generally leads to discussing the possibility of no indictment.

He said, "Well, well, suppose we decide to give you this information. What criteria will you use in re-evaluating it, or who deicdes how important it is and whether it could result in no indictment?"

And I said that in a case like this, not just in a formal sense but in a real sense,the United States Attorney would ultimately make the decision as to whether or not -- as to who should be indicted and what counts there should be in the indictment, and would have a much larger role in the strategy of it than just an ordinary case.

He said, "Well, what factors would generally be taken into consideration in evaluating or re-evaluating your position?"

And I said, "Well, one of the things that would be important is whether the information was able to be corroborated. Mr. Miller, you have to realize, is a somewhat involved, interested witness. If it's his word against the word of someone else, then that information would not be terribly valuable unless there were some independent way of corroborating." I said that the information would have to be important in the sense that it would have to be information that was an integral part of the case, not just an insignificant part of the case, and that it would have to be new information in the sense that it was information that led to the discovery of a totally different crime.

I said that depending on the degrees of value that you reach in each one of those factors, the Government could be led to evaluate its position, but that we couldn't make any determination of that without knowing the information, and that in all likelihood and in all probability the end result of all this was going to be that Mr. Miller was going to be indicted anyway because of the nature of the evidence against him.

Mr. RAbin said that he didn't think that, that he thought that the kind of information that he had was so devastating that it would force us to redraft our indictment, and therefore we would not, we would be forced to not indict him; and I said that those two things didn't follow, that one had no connection with the other, that we couldn't possibly tie our hands this way, and that basically we couldn't go along with any deal that involved our saying to him,"there is a realistic chance that you are not going to be indicted"; that of course, we are in a position where we are always approaching a case with an open mind, before indictment, after indictment, at any time, when information can be brought to our attention that indicates that someone isn't guilty. We have got to have an open mind about that and consider it, but that this was not the kind of thing we were talking about.

He said, "Well, this is the kind of information that if you don't indict after you receive it, you will be acting in bad faith."

Q You do indict?

A I'm sorry. "If you do indict after you receive it, you will be acting in bad faith."

At that point Mr. Jaffe and myself --

MR. RABIN: Can I interrupt for just a minute? Are we now talking about the first meeting on the 27th?

THE WITNESS: Yes, sir.

MR. RABIN: We are still at that meeting?

THE COURT: 4:00 o'clock.

THE WITNESS: Yes, sir.

MR. RABIN: Thank you, your Honor.

A I said that both Mr. Jaffe and myself got angry and said that this was a ridiculous conversation, that he was trying to blackmail us with this information, that we weren't going to be a party to it, and they should get out of my office, and we said that what he was doing was bordering on trying to dangle this information in front of us in order to get Miller out of an indictment in which, in the interests of fairness and justice he belonged, and we told him that, "Look, we don't want anything further to do with you. We don't want anything further to do with your client. Get out of the office. And we are just going to go ahead as we had planned, as if we had never heard about this so-called new significant information."

He said, "Well, listen, I want to talk to my client about it again. Can I have a few minutes with him?"

And then I said we have a meeting scheduled with other witnesses in this case and with the United States Attorney, and therefore couldn't see him for quite some time if he wanted to see us again, and that we wouldn't be available until -- I have forgotten when I said -- 8:30, 7:00 o'clock, and it basically broke off that way.

Q During this conversation did you have occasion to point out any reasons why Mr. Rabin might want Mr. Miller to give you this information any way?

A I told Mr. Rabin and Mr. Miller both that he was in a position where he was going to be indicted anyway, and that any information that he gave considering, at least the way I evaluated the case, would have to help him at the time of sentence.

And also remove the negative effect of having testified before a Grand Jury having discussed it with us and having apparently deliberately withheld what he conceived to be an important piece of evidence.

Q Mr. Miller and Mr. Rabin then stepped out, is that right?

A I don't know what point you are talking about.

Q Did there come a time when Mr. Rabin revealed something about what he was talking of?

A Yes, that's right. During the meeting of the 27th, Mr. Rabin said--

THE COURT: We are still in the afternoon.

THE WITNESS: That's right, your Honor. During the afternoon of the 27th Mr. Rabin said that this new information concerned a final payment to Congressman Podell.

We asked him was it an additional legal fee or was it a cash payment.

He said he didn't want to reveal anything else about it until he got a firm commitment that Mr. Miller wouldn't be indicted, and we told him again I guess maybe for the hundredth time that we couldn't give him any commitment like that.

Q Was there any suggestion at this time about talking to the U. S. Attorney about that?

A At the end of conversation after we told him he was blackmailing us with this information, we told him we didn't want to deal with him, he kind of reversed his position a little bit and said, "Well, I want to talk to my client about it, can we have a few minutes?"

That's when I said we had meetings scheduled with other witnesses and the U. S. Attorney.

He said, "Why don't you take this matter up"-- I am not absolutely sure if he said it, Mr. Jaffe said it or I said it, but what we discussed or said was we would talk to the U. S. Attorney about it.

Q Did you thereafter talk with the U. S. Attorney that evening?

A Yes, I did.

Q About what time was that?

A I think his Honor wants to ask a question.

MR. KURIANSKY: I am sorry.

THE COURT: We are moving away from 4 o'clock and I just want to ask this.

During this 4 o'clock meeting Mr. Miller was present throughout?

THE WITNESS: Basically he was present throughout.

THE COURT: And this whole conversation, and your and Mr. Jaffe's anger, and so forth, on the issue of blackmail, he was present during all that?

THE WITNESS: Absolutely, your Honor.

Q Returning to this meeting with the U. S. Attorney about 6:30 that night, I believe Mr. Jaffe has already testified to that but would you just briefly tell us who was there and the substance of that conversation?

A Yes. The meeting took place sometime--I am not sure of the exact time but sometime between a quarter to 6 and a quarter to 7 that night and took about a half hour, maybe 15 minutes of it devoted to this case.

And I think I--it began with myself and Mr. Kuriansky and in his office alone and Mr. Jaffe joined us.

We first discussed another case that has no relation at all to this case, and then I told him that Mr. Miller, Mr. Miller's lawyer had revealed to us at least a bit of what this new information was. I should explain that we had previously discussed our negotiations with Mr. Miller with the U. S. Attorney and the Chief Assistant so that they were aware of the fact that Mr. Miller had come in and said that he had new information that would be very, very important to us.

Mr. Curran asked myself and Mr. Jaffe how we evaluated that information in the context of our case, how important did we think testimony or evidence about an additional payment to Congressman Podell was.

We told him that in the context of this case we didn't think that that would be significant, that up to that point at least the operations of our mind, I think collectively, the three of us, Mr. Jaffe, myself and Mr. Curran, was that this was either information about a whole separate crime that Mr. Miller might have committed with Congressman Podell or that was just really a bit of nonsense that was being dangled in front of us, but we really hand't focused up to the point that Mr. Rabin told me that it was additional payment, we hadn't really focused on the fact it might have been additional payment.

Mr. Curran asked us how we evaluated that in the context of this case and we told him we didn't think it was terribly important, that there was a great deal of evidence about payments to congressman Podell, that at most it would be additional evidence as to the crimes that had already been established 40 different ways in the Grand Jury.

Mr. Curran said that, well, that was--basically he agreed with that position and that we should make it clear that we were giving him no promises of anything and that we shouldn't be put in a position of having our hands tied with this information, that we could use it any way we want and that if he wants to go ahead and give it to us, fine, if he doesn't, well, just do without it.

And although there was probably other discussion about other facets of the case that was the part of it that related to these negotiations with Mr. Miller and Mr. Rabin.

Q Now, following this meeting with Mr. Curran, was there a subsequent conversation with Mr. Rabin and Mr. Miller?

A At approximately 7 or a little after 7 o'clock, Mr. Rabin and Mr. Miller came back into my office.

Present at the time were also Mr. Jaffe and Mr. Michael Mukasey, who is also Assistant U. S. Attorney, and myself.

Q What conversation transpired on this occasion?

A As I best recollect it, Mr. Miller opened the conversation and said that he wanted to disclose this information [illegible] us, that he wanted to basically get it off his chest, that we had been dickering around now for two days and he just wanted to se[illegible] straight that he wasn't trying to withhold this information from us, that he wanted us to have it, and he wanted to testify to it and that he was afraid that he might have created--he didn't think that he had lied in the Grand Jury but that he was afraid that he might have created a misapprehension or a misimpression in the Grand Jury, and felt that in the whole context of this case that could really hurt him, that he wanted to disclose that information.

Q Did he tell you why he had previous misheld it?

A He said I tried very hard when I was first here to tell the truth to all the questions that you asked me in the Grand Jury and finally when I decided to tell the truth, to tell the truth to you and to Mr. Jaffe, I tried to be honest in my dealings with you.

I asked him "Why then did you withhold this information?"

He said he had not been specifically asked about it in the Grand Jury and that he didn't disclose it because there had been an awful lot of public disclosure about this case in the newspapers, people had interviewed him, newspaper people, FBI people, and no one seemed to know about it, no one seemed to know anything about this information, only he and Congressman Podell knew about it.

And, two, he was withholding it because he felt that maybe he would need a bargaining tool later on.

But that now he was fully convinced that he really didn't have much of a bargaining position and that would be best for him to disclose it.

Q Did Mr. Miller make any suggestion at this time concerning whether or not he should be indicted after turning this information over?

A Mr. Miller said that he felt that it would be only fair, or something to that effect, in light of what he had said, what he had said earlier and now being prepared to give us this new information, that he not be indicted.

At that point I said "Well, could you excuse us for a minute," and myself, Mr. Mukasey and Mr. Jaffe stepped outside.

Q And then what happened?

A The purpose of going outside was to make sure that we adequately conveyed to Mr. Miller and to Mr. Rabin what our position was so that there couldn't be the kind of dispute that has occurred.

Mr. Jaffe and I had been part of the discussion with Mr. Curran. Mr. Kukasey had not been. We told Mr. Mukasey that we had discussed this matter with the U. S.

Attorney, that we had all agreed that we were in a position where we should not and would not promise that he would not be indicted, that we wouldn't enter into any arrangement or agreement, that if Miller wanted to give us this information it had to be given to us on the record and that could be used against him, against the Congressman, against any other possible defendant that it might implicate. And that we basically were in an indepedent enough position to say "Give it to us on our terms or we don't take it."

THE COURT: I am a little confused. Did Miller say to you that he felt he shouldn't be indicted, or was that another statement made by Rabin?

THE WITNESS: Mr. Miller said right before we got up to walk out that in light of his previous testimony and his new information he should not be indicted.

Q This is what prompted the three of your to leave the room to settle upon a position to take, is that right?

A Yes, and the result of that was we were going to go back into that room and explain to Mr. Rabin and Mr. Miller what our position was and if they didn't accept that position they could walk out and without giving us the information.

Q Then you returned?

A Yes. We went back into the room and said, "Let's make something absolutely clear to you. We are not giving you any promise, Marty, you are not going to be indicted. We can't give you that promise and won't give you that promise. If that's in your mind let's not go further with this.

Number two, you have got to assume what's going to happen to you because the decision is eventually made by the Grand Jury, not by me, Jaffe, or Mr. Curran, you have got to assume anything that is going to happen to you you have to assume you will be indicted.

Also realize you are not going to tie our hands with this information, there is no strings attached to it. If you give it to us it can be used against you, against Podell, against his brother, or against anybody else that it might implicate, and that the only benefit that will come to you and I think it is a significant benefit, is that when there comes a day that you are going to be sentenced by a judge the judge will know that you have fully and honestly revealed what you conceive to be your involvement in this transaction.

Mr. Rabin, at that point replied, not Mr. Miller, and Mr. Rabin said that he felt that the information was of such a nature that if we took it and used it and didn't-- and then went ahead and indicted Miller we would be acting in bath faith.

Pretty much exactly what he had said at the earlier meeting.

We said well, if that was the situation then we didn't want the information, you can leave and we will again do without it, we will move ahead and if we have got a good case or a bad case, we will operate without it.

Miller said no, that he understood what I had said to him, he understood that no promises were being made to him, that he wanted to disclose this information for his own reasons, or something like that.

I said to him, "Okay. We are willing to listen to it, but let's just make sure you understand what I am saying to you" and I repeated it for a second time, basically the same exact warnings which I had written on a piece of paper with little catch phrases so that I made sure that I remembered, and I told him that there were no--he should be clear there were no promises being made to him, that--

At this point I may have said you are going to be indicted, I am sure I said at least you should assume you are going to be indicted, I may have said directly you are going to be indicted in any event.

I said anything you give us there will be no strings attached to it, you can't tie our hands with it, it can be used against you, the Congressman or his brother, and finally I repeated what I said before the only benefit that will come from doing this, Marty, is that on the day of sentence the judge will know that you have been honest, totally candid and honest about your involvement.

Miller said that, okay, he understood that, and he wanted--he understood what I said to him and he wanted to go ahead and tell us about it and then he disclosed that he had paid $29,000 to Congressman Podell in the form of a campaign contribution and he wasn't sure of exactly when it took place.

We asked him about some of the details of that, exactly how that took place, and then some confusion did arise as to the date that it happened. His recollection was--I am not sure if he even had a recollection of the year that it occurred.

We told him, or said to him, well, it probably occurred at sometime during or near a campaign. And he said that, well, what were those years? And we told him, well, 1970.

And he said he didn't think it occurred in 1970, he thought it occurred earlier than that, and we said "Well, it must have occurred sometime near a campaign, if it was a campaign contribution."

And he said well, he thought it had occurred earlier, and he said he thought he was pretty sure it occurred in the spring, so that would put it in the spring of 1969, which was a year and a half before Congressman Podell's next campaign.

Well, that kind of led into a discussion of the best way to resolve that is to get the check, do you still have it. Yes. Where is it? In my house back in Miami.

He told him that we would need the check and we gave him a subpoena for the check, and we toldhim that we needed it right away, and since this has been brought up I will tell you why.

We needed it right away, one, because we wanted to make sure there was such a check, and we wanted it to make sure that in the interim that nothing was done to it, it wasn't changed or altered in anyway and the faster it was brought to us the less it would remove the possibility of it being altered in any way.

In other words, we wanted to get our hands on it right away to make sure it was the genuine thing.

He agreed to go down to Miami and bring the check back.

Mr. Jaffe is the one who called up and made arrangements for his flight.

Then we kind of, we were beginning to break up, and Mr. Miller was going to go down to Miami, and I don't recall what prompted this, probably some discussion or some statement from Mr. Rabin or Mr. Miller about, well, what would the effect of all this be, how would this help Mr. Miller or this better help Mr. Miller since he was going through-- I guess that was it, this should help Mr. Miller since he is going through all this trouble.

I said to Mr. Miller as we were getting up, engaged in that conversation, that he shouldn't think that this was a free ticket out of the indictment, that he wasn't buying his way out of the indictment with this check.

We then got to the doorway, and either in the doorway or in the hall, Mr. Jaffe repeated almost exactly the same thing and said "Look, Marty, if you are going down there with the idea that this is a free ticket out of the indictment, that you are going to buy you way out of the indictment, then either don't go down or don't bother to come back, but don't turn it over, we are not going to take it on those conditions."

He said that he understood, and that he would try to come back as soon as possible, though he might have some difficulty in finding it.

Q Had Mr. Miller at any time in this conversation in speaking of his own bargaining position at this point, said that he felt he was at your mercy?

A I am not sure of the exact words that he used. He either said at the beginning when he first came in and put his head down and said that he wanted to give up this information that he realized that he didn't have a bargaining position, or that he was at our mercy, something to that effect.

Q Directing your attention to June 28, the following day, did Mr. Rabin come into the office?

A Sometime in the latter part of the morning, June 28, Mr. Rabin--first he called me and then he came into the office.

He handed me the check, the original of the check, and told me that Mr. Miller was very tired, that he had a tough time, had been up all night, and that he was sleeping in his hotel room. And I said "Okay".

I am not sure if we had scheduled Miller's Grand Jury appearance for the Friday at that point or if it was scheduled for Thursday, in other words, the day I was talking to Mr. Rabin, and I said, "Okay, we will question him then on Friday morning."

And Mr. Rabin said "Okay, he will see you next--tomorrow morning."

Q You had told Mr. Miller in that evening conversation of the 27th that you would expect him to testify in the Grand Jury about this check as well, didn't you?

A That's right.

Q On June 29, 1973, did Mr. Miller come to your offices again?

A Yes, he did. On June 29, Mr. Miller and Mr. Rabin came to my office and we had a discussion again in the presence of Mr. Jaffee about this same matter. I am not sure what part of it took place in my office. Some of it might have been in Mr. Jaffe's office. Some of it was outside the Grand Jury room on the 14th floor.

But basically the conversation concerned Mr.--I am not exactly sure how it began, your Honor. The subjects that it covered was, one, Mr. Jaffe saying to Mr. Miller that he should understand, like I told you before, this check and this testimony is not going to buy your way out of this indictment, I want you to be clear on that before you go into the Grand Jury, and Miller said that he was clear on it.

Q Did Mr. Rabin--

A Mr. Rabin also--I am sorry.

Q Did Mr. Rabin raise the subject of his not being indicted again?

A Mr. Rabin said that--well, wasn't this the kind of information, or something to that effect, that would result in no indictment for Mr. Miller? He may have even said leniency, I am not really sure if he said no indictment or leniency.

And I said, or Mr. Jaffe said--I think actually

Mr. Jaffe had participated more in this conversation than I did.

One of us said to him that he should be clear that Mr. Miller was going to be indicted and that if there was any, any thought that by giving this information Miller was going to buy his way out of the indictment that just wasn't going to be the case, that he should--I think Mr. Jaffe said to Mr. Miller if you think that, then you should just refuse to testify and take the Fifth Amendment.

Q Was there some discussion also about what would happen, what Miller would do should he be indicted?

A Mr. Rabin said that--he said it to Mr. Haffe or to me or to both of us--most of his conversation I am pretty certain was directed to Mr. Jaffe--that he--that our prime target in this case was Congressman Podell, that that's who we should be most interested in, and that if we indicted Mr. Miller, Mr. Miller was going to plead not guilty and go to trial and we would lose him as a witness, and that our prime concern should be Congressman Podell.

I told him that we had to decide what our prime concerns were, not him, that there were a lot of factors that determine what a prosecutor's office has to do, and that there really was no prime concern, that if Mr. Miller were guilty and the evidence pointed to the fact overwhelmingly that he had committed a crime then he was just going to have to be indicted, and that we weren't going to enter into any kind of a situation where we were going to let Miller off in order to get Congressman Podell. I think Mr. Jaffe essentially repeated that when he said that Miller wasn't going to buy his way out of the indictment.

Q Did Mr. Miller interject at this point?

A Mr. Miller said that he--Mr. Miller kind of took over, you know, for Mr. Rabin, and kind of said "Well, I want to testify in the Grand Jury, I want to get this whole thing straightened out, I want to clear up whatever wrong impression I gave the last time, and I want to get this thing off my chest."

And I think Mr. Jaffe for maybe the third or fourth time in the conversation that took about 15 to 20 minutes, said to him "Look, just understand that you are not buying your way out with this information, and if you think you are, take the Fifth Amendment."

Q Was that the end of that conversation, as best you recall it?

A There may have been some other little things said here and there, but that is basically the substance ofit.

Q Did Mr. Miller then testify in the grand jury?

A Mr. Jaffe and I went into the grand jury. We called Mr. Miller in, I think right afterwards; there may have been another witness. Mr. Jaffe warned Mr. Miller of his -- gave Mr. Miller the usual target warnings, and gave Mr. Miller a warning of his constitutional rights. I interrupted at one point during the warnings and asked him -- asked Miller to make sure that it was clear on the record that Mr. Miller -- asked Mr. Miller whether he had discussed this matter, this testimony he was about to give with his attorney, and he said that he did.

Mr. Jaffe then went on to explain to him that this information could be used against him in a court of law, and he said he understood that. And then we went on to examine him for a short period of time just focused on this $29,000 check.

Q That was a very brief appearance?

A Very brief, and it concerned exclusively one subject, the $29,000 check.

Q And on July 12, 1973, the indictment was filed, was it not?

A That's right.

MR. KURIANSKY: I have nothing else, your Honor.

CROSS-EXAMINATION

BY MR. RABIN:

Q Mr. Giuliani, on July 12, 1973, you and I did have a meeting at your office; do you recall that?

A Yes, we did.

Q In view of your concession there was such a meeting, I don't think there is a point for calling for the admission card. Will you concede that the admission card that in the normal course of business is signed --

MR. KURIANSKY: We stipulate you met with Mr. Giuliani on the morning of July 12th.

Q Now, Mr. Giuliani, as far as you can recall, was Mr. Miller ever asked before the grand jury whether he had made any payments to Congressman Podell other than the payments he testified to?

A I don't think he was. I'm not absolutely certain of that, Mr. Rabin, but I don't think he was.

Q And would it be fair to say that as far as any questions asked of Mr. Miller before the grand jury he did not lie or misrepresent with regard to the $29,000 chest, that we had been dickering around now for two days and he just wanted to set us straight that he wasn't trying to withhold this information from us, that he wanted us to have it, and he wanted to testify to it and that he was afraid that he might have created--he didn't think that he had lied in the Grand Jury but that he was afraid that he might have created a misapprehension or a misimpression in the Grand Jury, and felt that in the whole context of this case that could really hurt him, that he wanted to disclose that information.

Q Did he tell you why he had previous misheld it?

A He said I tried very hard when I was first here to tell the truth to all the questions that you asked me in the Grand Jury and finally when I decided to tell the truth, to tell the truth to you and to Mr. Jaffe I tried to be honest in my dealings with you.

I asked him "Why then did you withhold this information?"

He said he had not been specifically asked about it in the Grand Jury and that he didn't disclose it because there had been an awful lot of public disclosure about this case in the newspapers, people had interviewed him, newspaper people, FBI people, and no one seemed to know about it, no one seemed to know anything about this information, only he and Congressman Podell knew about it.

And, two, he was withholding it because he felt that maybe he would need a bargaining tool later on.

But that now he was fully convinced that he really didn't have much of a bargaining position and that would be best for him to disclose it.

Q Did Mr. Miller make any suggestion at this time concerning whether or not he should be indicted after turning this information over?

A Mr. Miller said that he felt that it would be only fair, or something to that effect, in light of what he had said, what he had said earlier and now being prepared to give us this new information, that he not be indicted.

At that point I said "Well, could you excuse us for a minute," and myself, Mr. Mukasey and Mr. Jaffe stepped outside.

Q And then what happened?

A The purpose of going outside was to make sure that we adequately conveyed to Mr. Miller and to Mr. Rabin what our position was so that there couldn't be the kind of dispute that has occurred.

Mr. Jaffe and I had been part of the discussion with Mr. Curran. Mr. Kukasey had not been. We told Mr. Mukasey that we had discussed this matter with the U. S.

Attorney, that we had all agreed that we were in a position where we should not and would not promise that he would not be indicted, that we wouldn't enter into any arrangement or agreement, that if Miller wanted to give us this information it had to be given to us on the record and that could be used against him, against the Congressman, against any other possible defendant that it might implicate. And that we basically were in an indepedent enough position to say "Give it to us on our terms or we don't take it."

THE COURT: I am a little confused. Did Miller say to you that he felt he shouldn't be indicted, or was that another statement made by Rabin?

THE WITNESS: Mr. Miller said right before we got up to walk out that in light of his previous testimony and his new information he should not be indicted.

Q This is what prompted the three of your to leave the room to settle upon a position to take, is that right?

A Yes, and the result of that was we were going to go back into that room and explain to Mr. Rabin and Mr. Miller what our position was and if they didn't accept that position they could walk out and without giving us the information.

Q Then you returned?

A Yes. We went back into the room and said, "Let's make something absolutely clear to you. We are not giving you any promise, Marty, you are not going to be indicted. We can't give you that promise and won't give you that promise. If that's in your mind let's not go further with this.

Number two, you have got to assume what's going to happen to you because the decision is eventually made by the Grand Jury, not by me, Jaffe, or Mr. Curran, you have got to assume anything that is going to happen to you you have to assume you will be indicted.

Also realize you are not going to tie our hands with this information, there is no strings attached to it. If you give it to us it can be used against you, against Podell, against his brother, or against anybody else that it might implicate, and that the only benefit that will come to you and I think it is a significant benefit, is that when there comes a day that you are going to be sentenced by a judge the judge will know that you have fully and honestly revealed what you conceive to be your involvement in this transaction.

Mr. Rabin, at that point replied, not Mr. Miller, and Mr. Rabin said that he felt that the information was of such a nature that if we took it and used it and didn't-- and then went ahead and indicted Miller we would be acting in bath faith.

Pretty much exactly what he had said at the earlier meeting.

We said well, if that was the situation then we didn't want the information, you can leave and we will again do without it, we will move ahead and if we have got a good case or a bad case, we will operate without it.

Miller said no, that he understood what I had said to him, he understood that no promises were being made to him, that he wanted to disclose this information for his own reasons, or something like that.

I said to him, "Okay. We are willing to listen to it, but let's just make sure you understand what I am saying to you" and I repeated it for a second time, basically the same exact warnings which I had written on a piece of paper with little catch phrases so that I made sure that I remembered, and I told him that there were no--he should be clear there were no promises being made to him, that--

At this point I may have said you are going to be indicted, I am sure I said at least you should assume you are going to be indicted, I may have said directly you are going to be indicted in any event.

I said anything you give us there will be no strings attached to it, you can't tie our hands with it, it can be used against you, the Congressman or his brother, and finally I repeated what I said before the only benefit that will come from doing this, Marty, is that on the day of sentence the judge will know that you have been honest, totally candid and honest about your involvement.

Miller said that, okay, he understood that, and he wanted--he understood what I said to him and he wanted to go ahead and tell us about it and then he disclosed that he had paid $29,000 to Congressman Podell in the form of a campaign contribution and he wasn't sure of exactly when it took place.

We asked him about some of the details of that, exactly how that took place, and then some confusion did arise as to the date that it happened. His recollection was--I am not sure if he even had a recollection of the year that it occurred.

We told him, or said to him, well, it probably occurred at sometime during or near a campaign. And he said that, well, what were those years? And we told him, well, 1970.

And he said he didn't think it occurred in 1970, he thought it occurred earlier than that, and we said "Well, it must have occurred sometime near a campaign, if it was a campaign contribution."

And he said well, he thought it had occurred earlier, and he said he thought he was pretty sure it occurred in the spring, so that would put it in the spring of 1969, which was a year and a half before Congressman Podell's next campaign.

Well, that kind of led into a discussion of the best way to resolve that is to get the check, do you still have it. Yes. Where is it? In my house back in Miami.

He told him that we would need the check and we gave him a subpoena for the check, and we toldhim that we needed it right away, and since this has been brought up I will tell you why.

We needed it right away, one, because we wanted to make sure there was such a check, and we wanted it to make sure that in the interim that nothing was done to it, it wasn't changed or altered in anyway and the faster it was brought to us the less it would remove the possibility of it being altered in any way.

In other words, we wanted to get our hands on it right away to make sure it was the genuine thing.

He agreed to go down to Miami and bring the check back.

Mr. Jaffe is the one who called up and made arrangements for his flight.

Then we kind of, we were beginning to break up, and Mr. Miller was going to go down to Miami, and I don't recall what prompted this, probably some discussion or some statement from Mr. Rabin or Mr. Miller about, well, what would the effect of all this be, how would this help Mr. Miller or this better help Mr. Miller since he was going through-- I guess that was it, this should help Mr. Miller since he is going through all this trouble.

I said to Mr. Miller as we were getting up, engaged in that conversation, that he shouldn't think that this was a free ticket out of the indictment, that he wasn't buying his way out of the indictment with this check.

We then got to the doorway, and either in the doorway or in the hall, Mr. Jaffe repeated almost exactly the same thing and said "Look, Marty, if you are going down there with the idea that this is a free ticket out of the indictment, that you are going to buy you way out of the indictment, then either don't go down or don't bother to come back, but don't turn it over, we are not going to take it on those conditions."

He said that he understood, and that he would try to come back as soon as possible, though he might have some difficulty in finding it.

Q Had Mr. Miller at any time in this conversation in speaking of his own bargaining position at this point, said that he felt he was at your mercy?

A I am not sure of the exact words that he used. He either said at the beginning when he first came in and put his head down and said that he wanted to give up this information that he realized that he didn't have a bargaining position, or that he was at our mercy, something to that effect.

Q Directing your attention to June 28, the following day, did Mr. Rabin come into the office?

A Sometime in the latter part of the morning, June 28, Mr. Rabin--first he called me and then he came into the office.

He handed me the check, the original of the check, and told me that Mr. Miller was very tired, that he had a tough time, had been up all night, and that he was sleeping in his hotel room. And I said "Okay".

I am not sure if we had scheduled Miller's Grand Jury appearance for the Friday at that point or if it was scheduled for Thursday, in other words, the day I was talking to Mr. Rabin, and I said, "Okay, we will question him then on Friday morning."

And Mr. Rabin said "Okay, he will see you next--tomorrow morning."

Q You had told Mr. Miller in that evening conversation of the 27th that you would expect him to testify in the Grand Jury about this check as well, didn't you?

A That's right.

Q On June 29, 1973, did Mr. Miller come to your offices again?

A Yes, he did. On June 29, Mr. Miller and Mr. Rabin came to my office and we had a discussion again in the presence of Mr. Jaffee about this same matter. I am not sure what part of it took place in my office. Some of it might have been in Mr. Jaffe's office. Some of it was outside the Grand Jury room on the 14th floor.

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A Very brief, and it concerned exclusively one subject, the $29,000 check.

Q And on July 12, 1973, the indictment was filed, was it not?

A That's right.

MR. KURIANSKY: I have nothing else, your Honor.

CROSS-EXAMINATION

BY MR. RABIN:

Q Mr. Giuliani, on July 12, 1973, you and I did have a meeting at your office; do you recall that?

A Yes, we did.

Q In view of your concession there was such a meeting, I don't think there is a point for calling for the admission card. Will you concede that the admission card that in the normal course of business is signed --

MR. KURIANSKY: We stipulate you met with Mr. Giuliani on the morning of July 12th.

Q Now, Mr. Giuliani, as far as you can recall, was Mr. Miller ever asked before the grand jury whether he had made any payments to Congressman Podell other than the payments he testified to?

A I don't think he was. I'm not absolutely certain of that, Mr. Rabin, but I don't think he was.

Q And would it be fair to say that as far as any questions asked of Mr. Miller before the grand jury he did not lie or misrepresent with regard to the $29,000 contribution?

A That really is a matter of interpretation. It could be convincingly argued that he deliberately misrepresented as to the $29,000 campaign contribution, and deliberately withheld it.

Q In regard to what the question --

A And probably under United States v. Alo could be the basis for an obstruction of justice charge.

THE COURT: Let's not get involved with two lawyers' interpretation of the law. I am really not interested in that.

Q All I am getting at is was there any specific question that called for a response that, yes, he had made a $29,000 campaign contribution or a $29,000 contribution to --

THE COURT: You mean during May, during the May grand jury?

MR. RABIN: During any -- I would say, yes, the May grand jury or the June grand jury. Obviously not the June grand jury.

Q Is that correct?

A I really don't understand that question at all.

THE COURT: Nor do I. I thought he was asked that in the June grand jury.

MR. RABIN: You are right, your Honor.

THE COURT: He only appeared in June once, as I recollect.

MR. RABIN: That's correct.

THE COURT: His other appearances were in May, May 10th and May 18th.

MR. RABIN: Yes.

Q Restricting it to the May grand jury, was any question asked of him which called for a response, if he was truthful, that a $29,000 contribution had been made?

A I don't recall a specific question about a campaign contribution. I recall questions that were general enough concerning his involvement with Congressman Podell that could have required him to answer and explain the full involvement with Congressman Podell, but I don't remember a specific question such as "Were there any further payments to Congressman Podell?"

THE COURT: I think it would be more helpful to me, what you are asking now is interpretation, and it seems to me that Mr. Giuliani has given a very full statement of the various conversations he had with you and Mr. Miller. As a matter of fact, his statement has been more complete than any of the others, and it seems to me what I would be more interested in, if you want to probe, is to probe those conversations, rather than the way you are going now in regard to whether he interprets Mr. Miller's appearance as being such that he had the feeling that he testified that Mr. Miller said he was going to make a clean breast of it.

Why don't you talk about conversations?

MR. RABIN: I will take your admonition, and perhaps I will close this line of questioning very quickly.

Q What I am getting at, Mr. Giuliani, is just what misimpression was it that you understood Mr. Miller was trying to clear up when he testified on June 29th?

MR. KURIANSKY: Objection, your Honor.

THE COURT: You are now asking him to read Mr. Miller's mind. He told us that Mr. Miller told him. He repeated a conversation. He is in no position to read his mind.

He said precisely as he remember it his recollection of what Mr. Miller said, that he felt that he had given a misimpression to the jury and, therefore, he wanted to get it off his chest.

Q Did you make any interpretation in your own mind as to what misimpression he was talking about?

MR. KURIANSKY: Objection.

THE COURT: I will sustain that. I think we are wasting time with that kind of question. I suggested to you that he has indicated that on four occasions, as I recall, twice on the 26th, I remember, and twice on the 27th, on the 28th, and on the 29th, he had conversations -- that's six, I'm sorry -- he had conversations with you and Mr. Miller and he has indicated what those conversations were in some detail, and it seems to me out of those six meetings this arose.

Q Mr. Giuliani, as perhaps the Court has indicated, at the first meeting you indicated to Mr. Miller it was virtually certain he was going to be indicted?

A You mean the morning of June 26th?

Q Yes.

A I told him he would be indicted, yes.

Q And the second meeting, which was in the afternoon, you told him he would be indicted?

A That's right.

Q And you told him that there was -- as far as you were concerned, any new information couldn't get him out of the indictment?

A I said something like that. I didn't say that. I said something like that.

Q Did you say that in substance?

A Yes.

Q And the third meeting on the 27th, which is the 4:00 o'clock meeting, you again said in substance that regardless of what new information might be offered, he was virtually certain to be indicted?

A Well, yes, I said something like that. I said that the likelihood was that he would be indicted regardless of what this information was.

Q And similarly, at the 7:00 o'clock, 7:00 to 9:00 o'clock meeting on the 27th?

A Yes, I said that to you and him, both.

I should say that I said that maybe twenty, twenty-five times, during the course of the time I dealt with you and with Mr. Miller.

Q What was the reason for your saying it so many times, if you said it once or five times or nine times?

A Because, in my experience, I found that this is done very often, and that people tend to make motions like this, and I wanted to make the record, very, very clear so that you understood that Mr. Miller was not buying his way out of this indictment with this information, that certainly it would help him but it wasn't going to help him in the area you wanted it to help him in.

Q And you kept on repeating that it would help him in the sentencing despite the fact that I had indicated that we were interested at this point only in dropping the indictment?

A You indicated that in kind of a conditional kind of way. You said, "At this point we are not interested in a plea. Maybe later on we will be. But we are interested in no indictment." And I tried to make it clear to you that the only think you were going to get for your client was possibly a plea to lesser counts, and then later on a full and complete statement to the Judge. I didn't just try to indicate it to you; I said it to you.

Q And would you tell us again, if you haven't -- you may have told us before -- what the reasons were that Mr. Miller gave for his giving this information despite the fact that, as you have indicated, he was going to be indicted?

A The reason he gave for giving this information?

Q Yes.

A He was afraid that he had created a misimpression in the grand jury when he had previously testified, and he felt that he had to get it off his chest. There might have been others, but those are the two that come to mind right now.

I think he also said that he had no bargaining position, or that he was at our mercy, and that really it wouldn't do him any good to just withhold the information.

MR. RABIN: I have no further questions of this witness.

THE COURT: Anything further?

MR. KURIANSKY: I just have two, your Honor.

REDIRECT EXAMINATION

BY MR. KURIANSKY:

Q During that July 12th meeting with Mr. Rabin just prior to the filing of the indictment, did you again make it clear that, as far as you understood, you had made no promises to Mr. Rabin about Mr. Miller not being indicted?

THE COURT: When is this?

MR. KURIANSKY: The July 12th conversation just prior to the indictment being filed.

A Yes, that was the reason for whatever yelling and screaming went on.

THE COURT: That's where there is no controvery at all. Mr. Rabin concedes that, that they had a -- well, I started to say "fight," but that is not right. They had a yelling and screaming contest according to him because of the fact he indicated to him he was going to be indicted.

THE WITNESS: The reason for it was that Mr. Rabin said to me that we had promised him he wouldn't be indicted and that was just totally untrue.

THE COURT: Yes, I know.

Mr. Rabin has put it in that context, that you said he was going to be indicted and he indicated that he felt he shouldn't be, and therefore it was in contest.

All right.

Q Finally, Mr. Giuliani, is it fair to say that after that point in the June 27th afternoon conversation, when Mr. Rabin suggested that you would be acting in bad faith if you didn't let his man out of the indictment, and you accused him of blackmailing the Government, that after that point the Government made it clear that any information Mr. Miller came forth with would be on the record and could be used against him in all ways?

A What I said to him exactly was, or as exactly as I remember it, that we just couldn't deal with him the way we do with an experienced criminal lawyer who we have confidence in their integrity, and that we would have to treat him and hold him out at arm's length, and that anything that he did say to us or eventually disclose to us would have to be on the record, and, therefore, we would be free to use it any way we wanted to.

Q In other words, whatever commitment you had at one time been willing to make with regard to taking this information off the record you were not withdrawing and stating that everything had to be on the record?

A Well, I think I made it clear then; I certainly made it clear that evening.

Q Following your conversation with Mr. Curran?

A Yes, sir.

MR. KURIANSKY: That is all, your Honor.

THE COURT: May I ask one question, although that is not in issue here -- I know you have given technical reasons in your brief -- why was Mr. Miller charged with conspiracy involving lying to the FBI with reference to his not being indicted?

THE WITNESS: I had conceived of the promise up until the time we started preparing this as a more narrow promise than that. I thought Mr. Jaffe had specifically told him that he wouldn't be indicted for a violation of 1001, the false statement count, and our feeling about it when we reviewed it was it would be a terribly technical distinction and that we would be in error in indicting him on the conspiracy count, even though the conspiracy count was a lot broader than just false statements.

THE COURT: All right.

Thank you.

(Witness excused.)

THE COURT: I suppose that concludes the hearing, is that correct?

MR. KURIANSKY: Yes, it does, your Honor. The Government has no furhter witnesses.

THE COURT: Do you have anything further, Mr. Rabin?

MR. RABIN: Do you want to listen to some short arguments?

THE COURT: No, I read your briefs. I have taken rather copious notes on this matter.

Mr. Reporter, when do you think the record on this will be available?

(Discussion off the record.)

THE COURT: I will read the record against my own notes, and decide the matter. I must say that, in all frankness and in all fairness to all sides, that my present impression is that this was a misunderstanding. That is my present impression, that no specific promise was made to you on which any reliance could be placed;

but I am not making that as a final announcement. I think you are entitled to have me read the record and make the decision, but I also thought that both you and the Government would be entitled to know what my initial impressions of this matter are. I may change when I read the record. Maybe they won't support my notes.

MR. GIULIANI: Just one further thing, your Honor.

When I testified, I didn't testify about the conversation of July 12th, and I don't want the record to stand such that we admit all the things that Mr. Rabin testified to about the conversation of the 12th.

THE COURT: Let me see --

MR. GIULIANI: If that is significant at all, I would be willing to tell you what my recollection of that is.

THE COURT: Maybe you'd better do that.

MR. GIULIANI: It's very brief.

THE COURT: I am not in a position to know what I think is significant, but you'd better do it anyway.

RODOLPH W. GIULIANI, resumed.

FURTHER REDIRECT EXAMINATION

BY MR. KURIANSKY:

Q Mr. Giuliani, on the morning of July 12th, Mr.

Rabin came to your office, didn't he?

A Yes, he did.

Q Who was present at that time?

A Myself, Mr. Rabin, Mr. Passaretti might have been around in and out maybe one or two times during the course of the conversation which lasted ten or twelve minutes.

Q Will you tell us what you and Mr. Rabin said to each other during that conversation?

A I told Mr. Rabin that I had been trying to contact him to give him the news that his client was going to be indicted that very day, that I had, in fact, talked to a partner or associate of his the day before, and basically given him -- I think what I told the partner or associate was that I had to talk with Mr. Rabin, I didn't have good news for him, and he said he could figure out or assume that that meant, and I said I wanted to talk to Mr. Rabin in person, any time he wants to come down, fine.

And Mr. Rabin came down on the morning of the 12th of July.

I told him that Mr. Miller was going to be indicted that afternoon or that morning, and he said, "Well, you can't indict him because you promised him that he wouldn't be indicted."

I said, "I don't understand. Say it again."

He said, "You promised him you were not going to indict him."

I said that wasn't true, I said that he was lying, that he had totally fouled up whatever was being said to him, and then I said some other things that really aren't very relevant.

He said basically the same things, that I was lying, that I had promised that Mr. Miller wouldn't be indicted, and that we were acting in bad faith and we were being arbitrary and some other language that isn't relevant.

We both calmed down and he said, well, he said something to the effect of, "Well, maybe you have not evaluated your case correctly. Miller could be very helpful to you as a witness. He won't be a witness now. He is going to trial and you are going to have to go to trial without him."

I said that was fine but that was our decision to make and we had to live with that decision.

He said, "Well, I am going to challenge the promise thing, and it just isn't logical that he would have testified and gotten nothing in return."

And I said, "Well, I would be willing to testify to what happened anywhere because we didn't promise him and we made it clear twenty different ways that Miller was going to be indicted and that there were no promises being made.

Q Did you say anything to Mr. Rabin about stipulating that his evidence wouldn't be used against him?

A I don't recall any conversation at all about stipulating to anything. Anyway, a suggestion like that would have been absolutely absurd as a solution to the problem he claims was suggested.

Q Was it at this conversation where Mr. Rabin indicated that he was not a criminal lawyer and didn't anticipate having any further dealings?

A He may have said that. I don't recall that being said, but he may have said that.

MR. KURIANSKY: Thank you.

RECROSS-EXAMINATION

BY MR. RABIN:

Q Mr. Giuliani, after the screaming and shouting match, aptly characterized by the Court, don't you recall that I said to you that we had a commitment for something, didn't we? Do you recall me saying that?

A I recall your saying something like that, that's right.

Q And do you recall you, yourself, saying to me in this ten or twelve minute conversation that might have been eight or nine minutes that the only commitment was that the information wouldn't be used against Miller and that you were going to abide by that commitment?

A Absolutely not. I didn't say anything like that.

Q You remember nothing at all about that conversation?

A I don't say I remember anything about that conversation. I say I don't remember my saying that to you or you saying that to me.

Q Was there any reference at all to the possibility of Miller not being prosecuted with regard to the $29,000 campaign contribution? Was there any reference made to that at this conversation?

A That's what you were talking about, when you were saying that he was promised that he wouldn't be prosecuted for any of these crimes because he had given information about this $29,000 campaign contribution, and I told you that just wasn't so. In fact, we had endless times, almost ad nauseum, told you that he would be prosecuted.

Q Was anything said that the evidence with regard to the $29,000 contribution, leaving aside the question of possible other promises, wouldn't be used against him?

A Absolutely not.

Q There was no reference at all?

A Absolutely not. No reference to that at all.

Q Mr. Giuliani, this was only a very brief conversation?

A As I recall it, ten or twelve minutes.

Q So there can be no misunderstanding with regard to this particular conversation, can there?

A I don't think there is, no.

Q It necessarily follows that one of us is lying, doesn't it?

A Well, I don't know --

Q With regard to this particular conversation.

A I am not lying about it,Mr. Rabin. You never talked to me about that, you never said that; it was made clear to you three or four times that this information could be and would be used against your client and it was said to him in the grand jury.

Q Mr. Giuliani, I am just --

A The only thing that wasn't done, it wasn't written for you on a blackboard.

Q All I am asking you is about this particular conversation.

A I have told you now three times that it wasn't discussed, absolutely, unequivocally, without any doubt, not discussed.

MR. RABIN: I have no further questions.

THE COURT: Thank you.

(Witness excused.)

THE COURT: All right, gentlemen. As soon as I have read the transcript, I will render an opinion, either a brief one, a terse one, or a fuller one; I don't know which at the present time.

MR. RABIN: Would it be helpful to you if we submitted some briefs, not more than, say, ten pages?

THE COURT: If you care to, fine, but the point I think that I have to do is what's involved here is my evaluation of the evidence. You have submitted briefs at the present time on the question as to whether -- both of you were kind enough to do that, on the question that I asked you to, and that is whether if I believed your story and Mr. Miller's story that I had the power to throw out the indictment. Both you and Mr. Giuliani concede that I do.

Now it's merely a question of my analyzing the record and making up my mind which side I feel more accurately reflects what actually happened, or a determination as to whether or not in fact a promise was made, or whether there was some misunderstanding. I have to evaluate it. I don't think you can help me very much with that. If you think you can --

MR. RABIN: I think your Honor is substantially correct.

THE COURT: I don't believe briefs are going to help me.

MR. RABIN: That's why I said very short briefs. All right, thank you.

THE COURT: In the light of what I said, if either you or Mr. Kuriansky feel that you can give me some guidance, then, by all means, but I doubt it very much. I think you would be more or less wasting your time. I think it's something I have to analyze.

MR. RABIN: Thank you, your Honor.

THE COURT: Thank you, gentlemen.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

v. : 73 Cr. 675

MARTIN MILLER, :

Defendant. :

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New York, New York
November 12, 1973 - 10:00 a.m.

BEFORE:

HON. ROBERT L. CARTER,
District Judge.

APPEARANCES:

PAUL J. CURRAN, Esq.,
United States Attorney for the Southern District of New York;
By: RUDOLPH GIULIANI, Esq.,
JOSEPH JAFFE, Esq., and
EDWARD J. KURIANSKY, Esq.,
Assistant United States Attorneys, of Counsel.

RABIN & SILVERMAN, Esqs.,
Attorneys for Defendant;
By: I. STEPHEN RABIN, Esq., of Counsel.

MR. RABIN: My next witness, your Honor, I call Mr. Martin Miller.

MARTIN MILLER, the defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RABIN:

Q Mr. Miller, what business or occupation are you in?

A I am in the leasing and financial consulting business.

Q And do you work at this business in Florida?

A Yes, O do.

Q How long have you been in this business, approximately?

A Well, twelve or thirteen years.

Q Years?

A Yes.

Q And this, of course, was the same business you were in when you testified before the grand jury?

A Yes, it is.

Q Now, do you recall that there came a time when you were subpoenaed to come up here to New York and testify before a grand jury here in New York?

A Yes, I recall that.

Q And was the approximate period of time during which you testified from May 10 to May 18, 1973?

A Yes, and then again at the end of June.

Q During this period of time when you testified before the grand jury, did you also have numerous conferences with Messrs. Giuliani and Jaffe, or either of them?

A Yes.

Q And, in general, did the discussion concern what you would testify to before the grand jury?

A Yes, it did.

Q And the facts underlying that testimony?

A Yes.

Q Incidentally, you were paid for your transportation and hotel expenses when you came up here during this period May 10 to May 18; is that right?

A Yes, that is correct.

Q The procedure was that you filed a subpoena and you got the money, is that it?

A Mr. Giuliani or Mr. Jaffe would fill out a form and I would bring it downstairs.

Q During this time were you represented by counsel?

A No, I was not.

Q Had I been retained with regard to any representation up until May 18, 1973?

A No.

Q Now, after you finished your testimony on May 18th or thereabouts, did you have a belief as to whether you would be indicted?

A Yes, I did.

Q And what was the substance of that belief?

A I didn't believe I would be indicted.

Q And what was the basis for your not believing that you would be indicted?

A Well, I didn't think that I committed any crime, so I didn't believe I would be indicted because I didn't believe I did anything wrong or improper.

Q Did Mr. Giuliani mention anything to you about your cooperation? Did he express any appreciation for your cooperation?

A He told me he believed I had testified truthfully before the grand jury, that I had not committed perjury and that I had cooperated.

Q Did he discuss with you any possible distinction between your position and Congressman Podell's position?

A Yes, he did.

Q What did he say, in substance?

A I think basically, he said -- MR. KURIANSKY: Your Honor, may we have a time on this conversation?

MR. RABIN: I meant to say it was approximately May 18, 1973.

A Either the 17th or the 18th. It was during the second time that I had testified before the grand jury.

MR. KURIANSKY: Before your second appearance in the grand jury?

MR. RABIN: No, after.

A It was before, during and after. Not during, but both before and after.

Q We are not talking about the June 29th testimony, but after your May 18th testimony.

A Yes, there was that discussion after my May 18th testimony before the grand jury.

Q And what did he say?

A Well, he said two things that I recall. He said that, firstly, that he said that every freshman Congressman, and I remember him saying this, is told what fees he could or could not accept and from whom, and that the fact that Congressman Podell had that knowledge did not necessarily mean that I had that knowledge, and from there he went on further to say that I may have committed a crime without intending to do so, and intent was a key factor to them.

Q Just so we're absolutely clear, Mr. Miller, you didn't understand this conversation as constituting a commitment from Mr. Giuliani that he would not, or would not recommend that you be indicted?

A Not at that time, no.

Q Did there come a time on or about June 21, 1973 when Mr.Giuliani contacted you?

A Yes.

Q Was that by telephone?

A Yes, it was.

Q You were in Florida?

A Yes.

Q And what was the substance of that conversation?

A Mr. Giuliani said that the grand jury investigation was reaching its conclusion and that he felt I ought to make arrangements to retain counsel and come to New York with counsel and meet with him.

Q Was anything said with reference to your possibly being indicted or not being indicted?

A Well, I asked Mr. Giuliani at that time if I was going to be indicted, and he said that that was one of the matters that he did want to discuss with counsel, and he didn't answer whether I was going to be indicted or not, but he recommended that I retain counsel and arrange to meet him in New York.

Q Then, Mr. Miller, subsequent to that, did there come a time when you spoke with me?

A Yes, I called you immediately after getting that phone call.

Q Was that on or about Friday, June 22nd?

A Yes, it was.

Q And do you recall whether I was in Florida at that time?

A I spoke to Mr. Silverman in New York who advised me that you were in Florida.

Q And do you recall speaking to me briefly on that day?

A Yes.

Q And then did you see me on Saturday?

A Yes, I did.

Q Where did you see me?

A At the home of a mutual friend of ours.

Q Where was this, in Long Island?

A Yes.

Q Was this a social affair at night?

A Yes.

Q With regard to this case, how long a conversation at that time did we have? Was it under five minutes or over five minutes?

A It was under five minutes.

Q And do you recall what you said to me in that conversation?

MR. KURIANSKY: I object to that, your Honor.

MR. RABIN: I don't know the basis of the objection.

THE COURT: Well, the point is that what we are dealing with here are chiefly his and your conversations with Mr. Giuliani and Mr. Jaffe.

MR. RABIN: Your Honor, what I am going to get into right now is the $29,000 contribution. I don't want to coach the witness. And as to what he said on Saturday is going to become relevant, very relevant to what happened on Tuesday and Wednesday of the succeeding week.

MR. KURIANSKY: Your Honor, not only is it hearsay but the only relevant testimony is what was discussed between Mr. Miller and Mr. Rabin and the Assistant United States Attorneys.

MR. RABIN: This is subject to connection. I have about two more questions.

MR. KURIANSKY: You can't connect hearsay, your

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MR. KURIANSKY: You can't connect hearsay, your

Honor.

MR. RABIN: What do you mean, hearsay?

MR. KURIANSKY: This is a conspiracy charge.

THE COURT: All right. I will hear it.

Q What did you say to me, Mr. Miller?

A I mentioned to you that I had made a $29,000 campaign contribution, that I was not questioned about before the grand jury.

Q On the morning of June 26, 1973, both you and I went to the United STates Attorney's office; is that correct?

A Yes, that is correct.

Q Approximately what time was that?

A I believe we met about 10:00 in the morning.

Q And who was there?

A You and I and Mr. Jaffe and Mr. Giuliani.

THE COURT: What date is that?

MR. RABIN: That was on June 26th, your Honor, in the morning.

Q Would you describe as best you can the substance of the conversation that was had at that meeting?

A We went into, I believe it was Mr. Giuliani's office, and Mr. Giuliani advised us that the, that I would in all probability be indicted.

Do you want me to continue?

Q Yes, would you continue?

A At that point, you explained to Mr. Giuliani that the impact of an indictment upon my business, career, and my means of earning a livelihood, and asked if there was anything that could be done to modify the Government's position or convince them not to indict me, and at that point Mr. Giuliani asked me to leave the room.

I did so. I sat in another office on that floor. And you had a separate conference with, I don't know with who because I left.

Q All right.

And then, afterawhile, did I come out and see you?

A Yes, you did.

Q And do you recall what I told you had occurred?

A Yes. You told me that after a conversation with Mr. Jaffe and Giuliani that they had told you that they would not indict me if I was able to give them new information.

Q Then did we both return to the office of Mr. Giuliani?

A Yes, we did.

Q And that was --

MR. RABIN: I withdraw that.

Q Now, Mr. Miller, from here on in, can you state positively what occurred specifically at each of the subsequent conversations?

A At each conversation?

Q Or --

A No.

Q I am not asking whether you remember the substance of the, but can you disentangle the second from the third?

A No, I really can't.

Q All right.

So, would it be fair to say that your testimony now will not necessarily pertain to the second as opposed to the third meeting?

A Mr. Rabin, I can tell you what happened, you know, factually, as a result of the various meetings, but I cannot testify as to what was said at which particular meeting, except the last meeting on the evening of, I believe it was June 27th, which I remember very well.

THE COURT: I think we ought to take a break now. Let's make it roughly fifteen minutes, and during that period of time I will take a plea.

So we'll adjourn for fifteen minutes.

(Recess.)

BY MR. RABIN:

Q As I recall, Mr. Miller, I think we were up to the point when you and I returned to Mr. Giuliani's office on June 25, 1973, at this morning conference. And when we went in to his office, do you recall me saying anything at that time? And I think you repeated the fact you had told me, in front of Mr. Giuliani, and asked for time to discuss the matter with me. That's right.

Q Subsequently, did we have other conferences and meetings?

THE COURT: By repeated facts and told you, what do you mean?

THE WITNESS: I'm sorry, your Honor. I don't understand.

THE COURT: You said he came and had a conversation with you, your attorney, and then told you certain things, among some of which, one of which I guess that you testified to, you said he repeated the facts that he had told you I gather in this prior conversation. What are you talking about, what facts?

THE WITNESS: When Mr. Rabin told me that Mr. Giuliani had told him that the only way for me to be, to avoid being indicted was to come forward with new information.

MR. KURIANSKY: May we fix a time on that, your Honor?

THE COURT: That is the morning of the 26th, and as I understand the testimony, the morning of the 26th there was a conversation with Mr. Jaffe and Mr. Giuliani, Mr. Miller and Mr. Rabin, maybe somebody else was there, I don't know, but those were the principals.

MR. RABIN: That's right.

THE COURT: And Mr. Rabin has indicated what a hardship it would be upon Mr. Miller if he were indicted, and at which point, as I understand the testimony, Mr. Giuliani asked Mr. Miller to step outside, and he and Mr. Rabin and Mr. Jaffe had a conference.

Mr. Rabin then went outside and advised Mr. Miller that he would not be indicted if he gave any new information, and they then went back inside, and Mr. Miller has just indicated that when he went inside that Mr. Rabin repeated to him what he had told him outside privately, and that was, that the only way he could avoid being indicted was to come up with some new information. Correct?

THE WITNESS: Yes, sir.

Q Again, to make this precise, did you understand at this point that there had been an absolute binding commitment that you would not be indicted.

A No.

Q All right. Subsequent to this conversation there were three other meetings, were there not, Mr. Miller?

A Either three or four. I am not certain.

Q And at least one of these meetings, the last meeting took place on the 27th, is that correct, June 27, 1973?

A Yes, that's correct.

Q And would you summarize for us what promise, if any, you understand had been made by the U. S. Attorney?

MR. KURIANSKY: Your Honor, I object to that. I'd like him to fix a time and place, when this promise was made if it was made.

THE COURT: The time is 6/27. I don't know where the place was.

MR. RABIN: We will get to that.

THE COURT: I don't want at this point substance. I want you to try to recall as accurately as you can who said what to you and the precise words they said it to you, if you can remember, and what you and Mr. Rabin said. All right.

THE WITNESS: Yes, your Honor.

THE COURT: Where is this conversation? Is this in Mr. Giuliani's office?

MR. RABIN: Yes.

Q Was this conversation in Mr. Giuliani's office?

A Yes, it was.

Q And is this the early evening of June 27, somewhere between--

A It was somewhere around 8 o'clock or 8:30.

Q Between 7 to 9.

A Yes, sir.

Q All right. Who was present while we were having this conversation?

A You and I were present, Mr. Giuliana and Mr. Jaffe and another Assistant U. S. Attorney, whose name I don't know except coming in and out but I don't remember his name.

Q But he was present for part of--

Q Does Mukasey refresh your recollection?

A I think that is who it is. I am not certain.

Q And what promise, if any, was made, bearing in mind Judge Carter's admonition?

A As best as I can remember, the phraseology and there might be a word or two difference, Mr. Giuliani said, and this was after a series of discussions, that if the information that I were to come forward with met three criteria, that it was new, significant and corroborated, I think that is the word, then I would not be indicted.

A And then he said to you, in addition to that, in any event, the information that I would give would not be used against me.

Q And do you recall whether there was any discussion as to whether--who was going to judge whether the information was significant or corrobrated or new?

A That was to be left to the discretion of the U. S. Attorney's office, and you asked that they use the guideline of fairness; just that they were fair.

Q Does good faith ring a bell with you, did I talk about good faith?

A Yes, they said they would act in good faith, and you had asked them to.

Q Incidentally, do you recall--this is going back a little bit, but at some of the conversations, the words, pig in a poke being used, or not buying information that was a pig in a poke?

A Yes, I do.

Q Who made that statement?

A Mr. Jaffe.

Q Now, subsequent to that promise that you just testified to, did you reveal any information?

A Yes, I did.

Q And what did you reveal?

A I said that I had given a $29,000 campaign contribution to Congressman Podell's campaign fund.

Q This is still in the period from 7 to 9 o'clock on June 27, 1973 in Mr. Giuliani's office at which Mr. Jaffe, Mr. Giuliani and perhaps Mr. Mukasey were present?

A Yes, it was.

Q And then what happened, Mr. Miller?

A They asked me for the approximate date of the campaign contribution.

Q Do you recall now what the date is?

A No, I don't. I don't recall the exact date.

Q Do you recall what approximate date you gave to them at that time?

A I said it was sometime in the early summer of 1969.

Q And what did they respond?

A They went out of the room and came back and said it was impossible, that the date had to be wrong, it had to be 1970.

Q Do you mean they left the room apparently to check on something, was that your impression?

A I thought they went to have a discussion among themselves. I don't know whther they were checking anything or not.

Q All right. And then would you just take it step by step, what happened, did you go down to Florida and so forth?

A I was handed a subpoena to go to Florida and produce the check and return on the next flight.

Q And did they make any commitment to you at that time as to whether they would pay your way?

A Yes, they said they would pay my way.

Q They gave you a subpoena?

A Yes, they did.

Q What did you do, did you go down to Florida and did you come back that very same night?

A I came back very early the next morning.

Q Can you recall with a little specificity what flight you took down, what airline?

A I think I took a 10 o'clock flight on Eastern or National Airlines and got into Miami about 1 in the morning.

Q You took it down at 10 o'clock on June 27 approximately?

A Yes.

Q And you got in at 1 o'clock in the morning in Miami on June 28, approximately?

A Right.

Q Then what did you do?

A Took a cab and went home.

Q And you eventually located the cancelled check?

A That's correct.

Q Where was the check located?

A In my personal file in my home.

Q Where were those files stored?

A In my den.

Q Were these files substantial or voluminous?

A Yes, there were many cartons of files.

Q How long did it take you to locate the check?

A Two or three hours.

Q Then what did you do?

A Went back to the airport and took the next flight to New York.

Q Who did you deliver that check to?

A I gave it to you.

Q And during that day, June 28, did you go to the U. S. Attorney's Office again?

A I think I went with you to deliver the check.

Q Was there any indication then that you were almost certainly going to be indicted?

A No.

Q Then what did you do, did you go back to your hotel?

A Yes, I did.

Q And had they informed you to stay, that you would be asked to testify the next day?

A Yes, they said that since I had been up all night they would prefer that I testify the next day.

Q And then when you went in--I withdraw that. On June 29 did you make an appearance before the Grand Jury?

A Yes, I did.

Q And both you and I went down to Foley Square, to this building, and we went up to where the Grand Jury was, is that correct?

A Yes, it is.

Q And you went in by yourself while I waited outside?

A That's correct.

Q And approximately how long were you in the Grand Jury?

A Just a veryshort time, a few minutes.

Q Would it be fair to say that all you testified to in the Grand Jury at that time concerned the $29,000 campaign contribution?

THE COURT: Would it be fair to say what?

Q Would it be fair to say that all your testimony on June 29 concerned the $29,000 campaign contribution?

A As I remember, all I did was identify the check and acknowledge signing it. I don't think I even testified beyond that.

Q Now, Mr. Miller, would you have given the information on June 27 concerning the $29,000 check if this promise had not been made?

MR. KURIANSKY: Objection, your Honor. It is hypothetical. The question is whether such a promise was ever made.

MR. RABIN: Well, he's testified to the fact that it was made, and I think using that as a predicate, he can testify to what he would do if it was not made.

THE COURT: All right, I don't think it matters--it is not of very much value to me, frankly, but I will let him answer if he wants to.

THE WITNESS: No, I would not have given that information.

Q And would your answer be the same to the question of whether you would have testified before the Grand Jury if a promise had not been made?

A My understanding was that the--prior to divulging the information of the check, that the investigation was concluded and that I was going to be indicted and I never thought about testifying before the Grand Jury again. I just assumed that was the end of it.

Q No, I mean before testifying before the Grand Jury on June 29, was it your understanding that you would not be indicted?

A Yes, it was my belief that I would not be indicted.

Q And again, just to make it perfectly clear, was your belief based on your understanding that the conditions of the primise had been made?

A Yes, right.

Q Did anybody from the U. S. Attorney's office ever give you any reason to believe that first they had not known about the check prior to your telling them, either you or I telling it to them?

MR. KURIANSKY: Your Honor, Mr. Jaffe has already testified to this.

THE COURT: I don't think that is very helpful.

A Mr. Miller, I have read the Grand Jury minutes. It appears to me that--I don't have it before me right now--but before you went into the Grand Jury that either Mr. Giuliani or Mr. Jaffe told you, advised you that everything you said could be used against you. You understood that?

THE WITNESS: Yes--

THE COURT: They told you that anything you said could be used against you?

THE WITNESS: They told me that, your Honor. I just believed that was a formality of the way you were sworn in to the Grand Jury,

THE COURT: I see. All right.

Q So to the best of your recollection, Mr. Miller, had you also been told that after you had been promised that youwould not be indicted for allegedly making false statements to the FBI?

A Yes, it was. I was told that every time that I testified before the Grand Jury, and I just assumed that is the way they called you before the Grand Jury. I had never been there before.

THE COURT: Did you ask them on either of those occasions as to whether the promise they had made to you, whether they renegged on the primise? Did you raise that question when they told you that?

A No, because they had never renegged on the promise to me, your Honor. I couldn't conceive that they would. It never crossed my mind.

THE COURT: I understand that when you went before the Grand Jury on these other occasions--I am sorry--

MR. RABIN: That's all right, your Honor

THE COURT: I understand that when you went before the Grand Jury on these other occasions, that is during May, not June, at least I understood from Mr. Jaffe, that inquiries were made of you concerning matters other than your alleged false testimony to the FBI, that you were asked a series of questions about various other things. Now, this time you knew that you were going before the Grand Jury only to testify about the check.

THE WITNESS: Yes, sir.

THE COURT: And you were not surprised or concerned in any way when they gave you this litany about anything you said would be used against you?

THE WITNESS: No, sir, I wasn't. I just thought they always said those things before you testified under oath.

THE COURT: All right. All right, Mr. Rabin.

MR. RABIN: Your Honor, I do wish, you know, what was or was not testified to is a matter of record in the Grand Jury minutes before your Hono, and I am just going to make the statement that the 5/18/1973 Grand Jury Minutes Afternoon Session, page 54 to 87, so far as I can tell, deal exclusively--perhaps I should say almost exclusively with matters relating to the FBI testimony.

I am not going to be very much longer, your Honor.

Q Mr. Miller, prior to giving the information concerning the $29,000 campaign contrabution, were you told that you should assume that you were going to be indicted even if you gave that information?

A No.

Q Were you told that no promises were being made prior to your giving that information?

A I was told that if the information didn't meet that criteria I would be indicted.

Q Were you told that the information would be used against you, could be used against you, regardless?

A Absolutely not.

Q That no strings were attached to the information?

A No.

Q Do you recall saying that you wanted to disclose this information nevertheless because you were at their mercy?

A No.

Q Do you recall saying in words or substance that you felt good about disclosing everything concerning any involvement with Congressman Podell?

A No.

MR. RABIN: I have no further questions.

THE COURT: Mr. Kuriansky.

EXHIBIT H TO RULE 9(g) STATEMENT

jkmch

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

v. : 73 Cr. 675

MARTIN MILLER, :

Defendant. :

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New York, New York
November 12, 1973 - 10:00 a.m.

BEFORE:

HON. ROBERT L. CARTER,

District Judge.

APPEARANCES:

PAUL J. CURRAN, Esq.,
United States Attorney for the Southern District of New York;
By: RUDOLPH GIULIANI, Esq.,
JOSEPH JAFFE, Esq., and
EDWARD J. KURIANSKY, Esq.,
Assistant United States Attorneys, of Counsel.

RABIN & SILVERMAN, Esqs.,
Attorneys for Defendant;
By: I. STEPHEN RABIN, Esq., of Counsel.

THE CLERK: United States of America v. Martin Miller.

MR. GOULD: If your Honor please, we are of counsel for other defendants in the case, so while we are not going to be active participants in the hearing, we do have some interest in it.

THE COURT: All right.

MR. GOULD: Thank you.

THE COURT: I gather you have an attorney?

MR. GIULIANI: Your Honor, Mr. Kuriansky is going to --

THE COURT: What's his name?

MR. GIULIANI: Edward Kuriansky, K-u-r-i-a-n-s-k-y, is going to do the questioning for the Government.

THE COURT: All right.

All right, Mr. Rabin, let's proceed.

MR. RABIN: Your Honor, before we proceed, I think I should bring to the Court's attention something which throws a marked difference upon the posture of the case.

THE COURT: You don't have to bring it to my attention. I have read the briefs.

MR. RABIN: I see. I received it on Sunday and I thought perhaps your Honor had not seen it.

THE COURT: No, I have read the briefs. I gather what you mean is that the Government has now decided that it will not proceed with the conspiracy count as far as Mr. Miller is concerned.

MR. RABIN: You are one step ahead of me, your Honor.

THE COURT: All right.

MR. RABIN: I call as my first witness, your Honor, Mr. Jaffe.

JOSEPH JAFFE, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. RABIN:

Q Mr. Jaffe, how long have you been with the U.S. Attorney's office?

A Two years and two months.

Q And during that period of time you have always been with the Criminal Division?

A That is correct.

Q And, of course, you have been involved, along with Mr. Giuliani, in the Podell, Miller investigation and indictment; is that correct?

A I have been.

Q You have read Mr. Giuliani's affidavit, haven't you?

A Yes, I have.

Q And to the best of your recollection, you don't have any disagreement with any of the statements that are made in that affidavit?

A That affidavit states in substance the transactions involving Mr. Miller.

MR. RABIN: May I ask for a response to the question.

Q I think we have all read the affidavit, Mr. Jaffe. I just ask you whether you disagree with anything in it?

THE COURT: Well, he's already filed an affidavit of his own. Why don't you ask him about his own affidavit?

A I have no serious disagreement with Mr. Giuliani's affidavit.

Q All right.

Do you recall the claim of Mr. Miller with regard to the alleged promise of immunity and the three conditions that went with it?

A I don't know how to answer that question, sir.

THE COURT: Mr. Rabin, we know why we're here, and all the -- nobody is surprised. Mr. Jaffe knows why he's being questioned, I presume.

MR. RABIN: All right.

THE COURT: So get to the heart of it in terms of what your claims are.

MR. RABIN: All right.

Q Mr. Jaffe, there is no question in your mind, is there, that prior to Mr. Miller's revealing the $29,000 contribution the Government did not know of that alleged $29,000 contribution?

A Mr. Miller was the source of our information on the $29,000 contribution.

Q Did you have any other independent source prior to Mr. Miller's giving you that information?

A Yes, we did.

Q What source was that?

A Prior to Mr. Miller making the disclosure of the $29,000 check, you disclosed to us that there was some evidence you had and he had which you had not revealed to us about some additional payment.

Q Prior to the information given directly or indi[illegible] by Mr. Miller or his counsel, myself, did you have any independent source as to the $29,000?

A I don't believe so.

Q Now, is there any question, Mr. Jaffe, that the information was significant to you?

A In terms of what?

Q In terms of the prosecution of this case.

A In terms of the prosecution of this case, the information was not significant. That is the only way I can answer it.

If you want an explanation I will give it; otherwise I will rest on that.

Q All right, Mr. Jaffe.

Is it true that prior to the information given to you by Mr. Miller or by me, an indictment had been drafted or a proposed indictment had been drafted in this case?

A Yes, we had drafted a proposed indictment.

Q And did that proposed indictment make any reference to a $29,000 campaign contribution?

A It did not.

Q And, of course, the present indictment does make such a reference; that is correct, isn't it?

A Yes, there is reference to a $29,000 contribution in the present indictment.

Q And, as a matter of fact, without asking you to look at all the counts in the indictment, there are a number of counts in the indictment which refer to the $29,000 contribution?

A Two counts.

Q Only two counts?

A Two counts refer to the $29,000 contribution.

MR. RABIN: Your Honor, I am not going to spend time on cross-examination. I think Mr. Jaffe is incorrect. But I think we can all look at the indictment and see how many counts the $29,000 is referred to in.

A Do you want an explanation of the count? I will give it to you, Mr. Rabin.

Q Thank you, Mr. Jaffe.

Now, as far as corroboration is concerned, is there any question that the $29,000 campaign contribution was corroborated?

A I don't know how to answer that. I don't understand the thrust of your question.

Q Well, in assessing the information that Mr. Miller gave you regarding the $29,000 contribution, was there some independent evidence of that contribution other than Mr. Miller's word of my word?

A Yes, there was.

Q And what evidence was that?

A There was an original cancelled check for $29,000.

Q And would it be fair to say, then, Mr. Jaffe, that if an agreement -- if an agreement was entered into with the United States Attorney's office, as Mr. Miller has alleged, that the conditions of that agreement have been met?

A No.

Q You disagree with that?

A I disagree that there was any agreement, and I don't understand what you mean that it's fair to say that some conditions had been met.

Q Mr. Jaffe, did you, during the period of time when I was, when I entered the case, at or about that period of time, did you have discussions with the United States Attorney as to whether Mr. Miller was to be indicted or not?

A Yes.

Q Can you tell me when those discussions took place?

A There were a series of discussions. I believe you entered the case on the 26th of June. Prior to that time and subsequent to that particular date, I believe there were at least two or three conversations that I had and Mr. Giuliani had with the United States Attorney. There had been other discussions prior to that time.

Q Well, let's pinpoint the time.

From June 26th through June 29th, June 29th being the date of Mr. Miller's grand jury testimony as to the $29,000 contribution -- do you recall that?

A I recall on June 29th Mr. Miller testified about the check in the grand jury, yes, I do.

Q Now, did you just testify -- correct me if I am wrong -- that from the 26th of June up until the 29th of June, just prior to his testifying before the grand jury, that is, Mr. Miller's testifying before the grand jury, you had two conversations, or at least two conversations, with the United States Attorney?

A I had at least two with regard to Mr. Miller. I had others on other subjects. I might have had more with regard to Mr. Miller.

Q And with relation to -- I'm sorry. I withdraw it.

When in this period between the 26th and the 29th did the first conversation take place?

A I believe we had a conference with the United STates Attorney on the 26th, sometime in the afternoon. I believe we had a conference on the 27th -- I know we had a conference on the 27th between the first and second meetings that Mr. Giuliani and I had with you and Mr. Miller in the afternoon, and I believe we had had another one that morning. So I would have to restate what I said before and say we probably had at least three discussions with the United States Attorney, to the best of my recollection.

Q Do you recall approximately what time your last conversation with the United States Attorney was on the 27th with you?

A I believe it was around 6:00 o'clock or 6:15, somewhere in that time period.

Q Of course that was prior to our, Mr. Miller and my entry into your office, at which we had a conversation; is that correct?

A No, sir, that is not correct. You did not enter my office on the night of the 27th. The conversations we had were in Mr. Giuliani's office. I did have a conversation with the United States Attorney and with Mr. Giuliani after you and Mr. Miller had left on our first conference on the 27th and prior to your returning and resuming the evening of the 27th.

Q What was the substance of the conversation that you had with the United States Attorney prior to our coming to see you in the evening of the 27th? With regard to Mr. Miller, I mean.

A The substance of the conversation was -- well, the conversation was with regard to whether or not any promise should be made to Mr. Miller in exchange for certain information.

Q And what else was said in that conversation?

A In substance, Mr. Giuliani and I discussed with the United States Attorney the fact that Mr. Miller, as we had previously told him, had some new information, as he said, with regard to the investigation that we had under way.

At that time, as the United States Attorney was aware, we had no indication what the new information was except for the fact that the new information might include that some additional payments had been made to Congressman Podell.

We discussed the fact that we had, in our view, a very tight case against the individuals then under investigation, that we were not going to make any promises to Mr. Miller in return for his new information, and that in all probability Mr. Miller was going to be prosecuted.

Q You said this to the United States Attorney?

A You asked me the substance of the conversations. I can't recall who said what, but I can recall that in that conversation, among the United States Attorney, Mr.

Giuliani and myself, it was determined by the United States Attorney that we were not going to make any promises to Mr. Miller, that we did not have any indication of, other than the fact that he had some additional -- he was going to give us or could give us some information about an additional payment, that he did not have any information about any new crime, but just further information about the crime which we had already been investigating, and it was determined further that any information Mr. Miller would give us would have to be on the record.

We discussed with the United States Attorney the fact that Mr. Miller and you on the previous day had -- we had discussed with you and Mr. Miller the opportunity to make an off-the-record disclosure. We had discussed how that had been rejected in the subsequent conferences, and we discussed that any information we took to you would be on the record, that what we would get from you we would get with no strings attached, that our hands were not going to be tied in any way, and we were not going to promise Mr. Miller any type of immunity or allow him to buy himself out of any indictment by whatever information he would give us.

In substance, not in precise words, that was our conversation with the United States Attorney.

Q It was your belief, then, Mr. Jaffe, after you left the United States Attorney's office, that certainly at that point it was a virtual certainty that Mr. Miller would be indicted, is that right?

A It was my belief that the position of the United States Attorney's office was that we would recommend an indictment as to Mr. Miller.

Q Isn't that the same as saying that as a virtual certainty he would be indicted?

A No, sir.

Q Did you tell either Mr. Miller or myself at that conversation that we had, the last conversation that we had on the 27th, that there had been a discussion with the United States Attorney's office and the conclusion that had been arrived at?

A I do not believe we did; not that substance of it. We did indicate that we had met with the United States Attorney, and we did indicate to you that whatever you gave us was on the record. We did indicate to you and your client that your client was not going to buy himself out of any indictment by whatever information we gave him. We did indicate that there would not be any immunity granted to your client. We did indicate that there would be no promise that we would not prosecute him, that is, your client, excuse me, Mr. Miller.

Q All right, Mr. Jaffe.

Let's go through Mr. Miller's affidavit and let's see if there are some points on which we can get agreement.

Mr. Jaffe, at the time of our first meeting -- that was on June 26th --

A The first meeting that you came into our office, to my recollection, was the 26th of June.

Q That was a morning, was it not?

A Yes, it was.

Q And at that first meeting, both of us were informed that Mr. Miller would probably be indicted or was going to be indicted; is that correct?

A You mean both you and Mr. Miller?

Q Yes.

A I don't recall now whether Mr. Miller sat in for that part of the conversation or not. I recall that at one time, the morning conference of the 26th, you and Mr. Miller came in and thereafter Mr. Miller left the office, and to my recollection you were apprised by Mr. Giuliani and myself what Mr. Miller's situation was.

Q When you say Mr. Miller left the office, did he come back?

A I believe he did.

Q Are you certain of that?

A No, sir.

Q He may have left the office and may not have come back, but you are not sure?

A He left Mr. Giuliani's office. I believe he went and sat in Mr. Passaretti's office. He thereafter returned. How much of the conversation on that morning he was partaking in, I don't recall. The conversation at best was a thirty-minute conversation. I think it was shorter.

Q Well, does it refresh your recollection if I read from Mr. Giuliani's affidavit --

MR. RABIN: Strike that. I will withdraw that, your Honor.

Q At that first conversation, or at a subsequent conversation, was there a discussion of the promise of the Government that Mr. Miller would not be indicted for making allegedly false statements to the FBI?

A There was a discussion of that on the morning of the 26th. The discussion wasn't restricted, it wasn't in the language you just gave, but --

Q In substance.

A In substance, there was discussion of the promise that had been made to Mr. Miller.

Q And at that conversation or at a subsequent conversation did Mr. Giuliani or you point out that you would agree to bring Mr. Miller's cooperation to the attention of the Court and possibly give him favorable consideration to allowing him to plead to some kind of lesser count?

A No, sir. That is incorrect.

Q You do not recall that?

A I recall what happened, but your language is incorrect.

Q Is it correct in substance?

A No, sir.

Q Well, would you tell me in substance, then, what was said at that confersation?

A You were informed and your client was informed that the Government had promised Mr. Miller that he would not be prosecuted by the United States Attorney for the Southern District of New York for any false statements he had given to the FBI. You were informed that he in all probability was going to be indicted. You were told that he had cooperated with the Government. You were told that, when you asked what could be done for him or what he was going to get out of his cooperation, that Mr. Miller, after he was indicted, would be allowed to plead to less than the entire indictment, and that his cooperation would be made known to the Judge.

You were also informed that, in addition to informing the Court as to the cooperation he gave, the Court would be informed with regard to the Government's opinion of those areas of the testimony where we did not believe Mr. Miller to be credible.

Q All right. And certainly at that --

MR. RABIN: I withdraw that.

Q At that first conversation, to the best of your recollection, was I insistent that the indictment be dropped?

A To the best of my recollection you were informed along the lines I just testified to, and because of the time involved and because you wanted to have time to speak to your client, there was no further discussion.

Q Well, do you recall, Mr. Jaffe, my stating at that conversation that, to plead to less than all the counts in the indictment was no inducement to Mr. Miller because the indictment itself, if it was issued, would harm him, because he was in the leasing business; do you recall that?

A I don't recall if that was on the morning of the 26th or the afternoon of the 26th. I recall that there was conversation along those lines, yes.

Q And do you recall whether on the morning of the 26th or on the evening of the 27th, or on the afternoon of the 26th, that I did urge, request, insist, that the indictment be dropped, in substance?

A You asked whether there was any way that Mr. Miller could get out of the indictment.

Q Was the purpose of my asking in order to get this indictment to be dropped?

A I don't know how else to state it, Mr. Rabin. You were seeking to have Mr. Miller not indicted, and you were informed that that was not a possibility.

Q Subsequently, there did come a time, Mr. Jaffe, when either Mr. Miller or I offered new information, is that correct?

A I can't respond to that question, because I don't understand what you are asking.

Q Well, did there come a time when either Mr. Miller or I said that we were in possession of information that would be of interest to the United States Attorney's office, in substance?

A Yes. That was the afternoon of the 26th. You indicated to us that you had some information that Mr.

Miller had withheld from us.

Q And again, without attempting to differentiate between these four meetings that we had, Mr. Miller, myself, and you and Mr.Giuliani, did there come a time when you, Mr. Jaffe, said that you couldn't commit yourself, meaning the United States Attorney's office couldn't commit itself to dropping the indictment until they knew the nature of the information and they would not buy "a pig in a poke"?

A Part of what you just asked is partially what I said. Part is not.

I believe the substance of that conversation was on the afternoon of the 26th of June, and you said you had certain information and you'd offer that information to the United States Attorney's office on a guarantee that Mr. Miller would not be indicted, and you also wanted to know what else or what other things were possible for Mr. Miller. And what I said to you, in substance, to you and Mr. Miller, was that you could not expect us to any way evaluate something in an absolute vacuum, and that we wouldn't take anything and even think about it without knowing what it was, and it was at that point that we asked -- you asked, and we described to you that we could take an off-the-record discussion with you with regard to what was involved.

Q May I interrupt you for a moment?

The words, "pig in a poke" --

A Those were my words.

Q Those were your words.

And, again, do you recall at one of these conversations that there was a reference by Mr. Giuliani to the factors that might be considered in whether to drop the indictment, and he referred to new, corroborated and significant or important information? I am not saying whether a promise was made, but I am just saying, there was a reference to these factors?

A That is absolutely incorrect in the context that you bring it out.

Q All right. Would you tell me in what context it is correct?

A Yes, sir. I believe that the reference to those factors occurred on the 27th, on the first conference, and I believe that that was part of a conversation Mr. Giuliani had when you asked, "Aren't there cases where there are people who cooperate with the United States Government, and in those cases they're not indicted?" and Mr. Giuliani was explaining to you how the process worked, when defendants who cooperated were not indicted, and he indicated to you that oftentimes, when a defendant comes in and gives information, and the information is such that it's evidence of an entirely new crime, totally apart from anything that the Government had already discovered with regard to the particular defendant, it's in those circumstances that people are not indicted, and he indicated to you the type of information that would be used in assessing the information that would be given. And he also indicated to you the type of information and those factors in that particular discussion, those factors were the factors that you were told would be brought to the attention -- before we would even go to the United States Attorney to discuss what Mr. Miller's position, information would be, that this would be the type of factors about the information that would cause us to to go talk to the United States Attorney, so that the United States Attorney and we would make an assessment as to what type, if there was going to be a re-evaluation of Mr. Miller's position, it would be a re-evaluation of how many counts of the indictment, for example, he would be included in.

But in the contest that you describe it, that those are the factors that Mr. Giuliani --

Q They were referred to, were they not, Mr. Jaffe?

A Let me finish. May I finish the statement?

Q Yes.

A Those factors were referred to as factors that would be considered. There was never any discussion that those factors were the factors that would be considered as factors to buy Mr. Miller out of the indictment.

MR. RABIN: That was not the question, but I think the Court can understand.

Q Mr. Jaffe, you have just mentioned that Mr. Giuliani talked about evidence of a new crime.

Now, are you sure about that statement? Was that mentioned in the conversation that we had on that day?

A Mr. Giuliani mentioned how people went about, on your questioning --

Q Mr. Jaffe, you have just mentioned evidence of a new crime.

Now, was that mentioned -- you don't have to repeat your whole conversation. Was that mentioned in the conversation that I had with Mr. Giulani and you?

A The question?

Q Can we get a yes or no answer?

A I can't answer your question in a yes or no. I can give you the context that those words were used in.

Q Do you recall just testifying to the fact that there was mention of evidence proving a new crime? Do you recall saying something to that effect?

A I said that if there were evidence of a wholly new and separate crime, yes.

Q Wholly new and separate crime.

Now, to your mind that's rather important, is it not?

A Important to what?

Q I mean, this is an important item of the conversation that was had on that day, is it not?

THE COURT: As I understand what Mr. Jaffe said, Mr. Rabin, is that I understand him to say that that conversation was a conversation between you and Mr. Giuliani, and at that time Mr. Giuliani was explaining to you the yardstick or standard pursuant to which the Government would offer not to indict, and that was the context in which the words were to be used.

Well, he explained, isn't that correct?

THE WITNESS: Yes, your Honor, and it was in terms of how the Government would go about not indicting a defendant, not this particular indictment.

THE COURT: I understand that.

MR. RABIN: Your Honor, I am driving at a specific point on this wholly new and separate crime because this is the first I have heard about it.

THE COURT: The problem I have with the question, and with your driving it home, is that the way that Mr. Giuliani is explaining, as he explains it as the way he understands what occurred, that it was a discussion of guidelines and standards that the United States Attorney's office used in cases without any specificity with regard to your client.

MR. RABIN: Your HOnor, obviously on this cross-examination I am not going to establish that a promise was made, but I am trying to establish that at least these factors were discussed.

THE COURT: Well, you have already established that.

MR. RABIN: All right, your Honor.

Q Do you recall, Mr. Jaffe -- and this was on the record, so I don't have any problem with adverting to it -- that at the conference in chambers, the question was put to you and Mr. Giuliani jointly, whether there was anything additionally significant that you recall that you had not put in the affidavits?

THE COURT: When you say "in chambers," you are talking about a conference in which I was present?

MR. RABIN: Yes, sir, the last conference, your

Honor, that was on the record.

A I believe the question was, was there any additional information or any additional testimony that the Government wanted to put before the Court. I believe Mr. Giuliani indicated on behalf of the office that we would stand on the affidavits that we had submitted. I think that was the thrust of the question and what we informed the Court about.

Q Mr. Jaffe, do you recall that there is no reference at all to the question of a wholly new and separate crime in the affidavit of Mr. Giuliani?

A Having recently read it, I would say you are right, there is no reference to that in there.

Q All right.

And there is no reference to that in your affidavit, is there?

A I don't believe so, no.

Q And there is no reference to that in Mr. Mukasey's affidavit, is there?

A I haven't recently read that, but I would say probably not.

Q Incidentally, Mr. Jaffe, do you recall at some time during these conversations there was a discussion of the possibility of a runaway grand jury?

A I believe there was.

Q And do you recall, during these conversations, that there was a discussion or there was a statement made by Giuliani that he was the man in charge of the case, in substance, and that he had the authority to make commitments as to whether Mr. Miller would be indicted or not? I am not asking you whether a commitment was made. I am asking you about his authority.

A That is incorrect.

Q That is incorrect.

Was there any statement made about Mr. Giuliani's authority to enter into commitments?

A Mr. Giuliani was discussing with you the fact that whatever would be done with Mr. Miller and with regard to this entire case would have to be brought to the attention of the United States Attorney's office. He did indicate to you that he was the Assistant in charge of the particular case, but he also indicated that, in light of the type of case it was, that this was a case where everything that was done was explained to the United States Attorney.

Q Did he ever indicate that there was a likelihood that he would be overruled as to his recommendation?

A He indicated to you that --

Q Can you answer that question?

A Not the way you state it, no.

Q Not the way I state it. All right.

In fact, though, in this case, Mr. Giuliani was not overruled as to any recommendation he made with regard to the indictment of Martin Miller; is that correct?

A I don't understand that question, either.

Q Did Mr. Giuliani or did you go to the United States Attorney and say Mr. Miller should not be indicted, and did the United States Attorney say to you he should be indicted anyway, in substance?

A I don't believe so.

Q Mr. Jaffe, in the office of the United States Attorney -- and I know you will correct me if I am wrong, if I am using the wrong terminology -- there is something called an informal grant of immunity and a formal grant of immunity; is that correct?

A There is a procedure for a formal grant of immunity and at times there has been informal immunity, yes.

Q I'm sorry. I didn't hear the answer.

A There is a procedure for formal immunity. For formal immunity in applications made to the District Court, upon that application, upon the witness taking the stand before a grand jury or a jury usually, the Judge signs the order and formal immunity is entered.

Q But aside from this formal procedure, on occasion, informal grants of immunity are granted or informal deals are made, are there not?

A The informal immunity that I have knowledge of, that I participated in, has been informal immunity where the intention of the United States Attorney to seek a formal grant of immunity has been put on the record before the grand jury and thereafter a formal order of immunity has been entered.

Q Well, taking immunity in its broadest aspect, in your two years and some months with the United States Attorney's office, there have been occasions that you have made deals with people, and I don't use that in a derogatory sense, that in return for their cooperation they would not be indicted; is that correct?

A Yes.

Q There are other commitments that have been made by the United States Attorney's office from time to time of varied natures, that they wouldn't be indicted for a particular offense, or that their cooperation would be brought to the attention of the Judge, or other conditions' is that correct?

A There have been occasions when various people have made -- have been offered certain things for their cooperation, that is correct.

Q Well, in this case, of course, there is no question -- and again not getting into the exact wording because the Government has apparently made a concession -- there was a promise made to Mr. Miller that he would not be indicted for making allegedly false statements to the FBI, is that correct in substance?

A No, sir. The exact substance of what was said was, Mr. Miller would not be prosecuted by the United States Attorney's office in the Southern District of New York for any false statements he may have given to the FBI that we were aware of. That was the promise that was made.

Q And subsequent to that promise, Mr. Miller did testify before the grand jury, did he not?

A He had testified prior to that promise and he testified after that promise.

Q And his testimony after that promise is concerned, among other things, the question of what statements he had given to the FBI, is that right?

A That is correct.

Q And prior to his testimony the standard warnings were given to Mr. Miller, is that correct?

A I don't know what you mean by standard warnings.

Q Well, I mean that he was warned that he had the right to take the Fifth Amendment and the right to counsel, and the warnings that you usually give to defendants before the grand jury?

A Mr. Miller was informed he was a target of the investigation, and he was given his Miranda rights. He was warned at length about committing perjury, and thereafter he testified.

Q As a matter of fact, Mr. Jaffe, since you said you would not prosecute him with respect to these FBI statements, you still gave him a warning that you just testified to; is that right?

A We advised him of the nature of the investigation, which included, among other things, violation of false statements, the statutes relating to false statements, bribe giving, conflict of interest, perjury, and conspiracy. We informed him that was the nature of the grand jury investigation.

Q Well, do you recall, Mr. Jaffe, that in the afternoon of May 18th when he testified before the grand jury, at that point all of his testimony concerned the alleged, the statements he gave to the FBI and conversations he had with the Podells regarding the statements he had given to the FBI? Do you recall that?

A I recall he was questioned in the afternoon of the 18th concerning various conversations he had had with various individuals and various statements he had given.

Q And didn't those conversations go to the point of whether his statements to the FBI were true or not, among other things?

A He was asked whether or not he deliberately lied to the FBI and he indicated that he had.

Q And he had been promised that he would not be prosecuted for that alleged violation?

A He hadn't been promised a thing about conspiracy to obstruct justice, no, he hadn't.

THE COURT: Let's cut through this. I think that -- I think the questions that Mr. Rabin asks might be interesting. As I understand it, at some point, I don't know when, Mr. Miller was advised that he would not be prosecuted for any false statements that anyone in the United States Attorney's office in the Southern District of New York is aware of, that he would not be prosecuted for any false statements he made to the FBI in this District.

Now, sometime after that, according to your testimony, he made statements to the FBI concerning that matter before, and afterwards -- I mean, I'm sorry, to the grand jury after that promise was made. The question that is being asked is -- and he then went before the grand jury -- was he given at that time the standard warnings that anything he said could be used against him?

THE WITNESS: Yes, your Honor, he was given his Miranda warnings.

THE COURT: After you had made the promise to him with regard to the fact that you weren't going to prosecute him for any false statements he made to the FBI?

THE WITNESS: That's correct, your Honor, he was still a target of all the others.

THE COURT: All the others. And therefore you made no differentiation, you gave him a blanket warning, and he thereafter went and testified about false statements he made to the FBI, among other things?

THE WITNESS: Yes.

THE COURT: All right. I think I understand.

MR. RABIN: Thank you, your Honor.

Q Mr. Jaffe, do you recall, or did you have doubts about the credibility of Miller's prior testimony at or about the time that we were talking on June 26th and later?

A Yes, sir.

Q Would you agree with Mr. Giuliani's characterization in his affidavit, he referred to his testimony at one point as being evasive and less than candid, quote, unquote?

A Those were some of the adjectives used, yes.

Q Do you agree with that?

A Yes, sir.

Q And, of course, you'd agree with Mr. Giuliani's affidavit that Mr. Miller, in effect, in his testimony before the grand jury, made a full confession to all of the crimes that were charged?

A I would say yes, he's made a full confession of all the crimes charged in this indictment, yes.

Q Thank you.

And you don't disagree with Mr. Giuliani's commitment that in return for his cooperation, his cooperation would be brought before the Judge, and that he might be allowed to plead guilty in return for that cooperation to less than all the counts in the indictment?

THE COURT: He's already testified to that.

Q Mr. Jaffe, don't you see a contradiction between asserting that Mr. Miller was evasive and less than candid, made a full confession, and also was cooperative?

A Not at all.

Q You don't see that contradiction?

A No, sir.

MR. RABIN: I have no further questions of this witness.

THE COURT: All right.

MR. KURIANSKY: Your Honor, I have only a few on cross-examination.

CROSS-EXAMINATION

BY MR. KURIANSKY;

Q Mr. Jaffe, you were asked before about the factors that Mr. Rabin mentioned in his affidavit, and he asked you specifically whether or not the evidence regarding the $29,000 contribution was significant, and you told him that in terms of this indictment it was not.

Would you explain to us why?

A Yes, sir, because the evidence of the $29,000 check, in our view, was merely another payment. We already had significant payments made to the Congressman and it was just an additional payment, so in terms of significance, it was not significant.

THE COURT: I don't understand what the purpose of that is anyway. The point is that, even if it were significant, unless a promise had been made to --

MR. KURIANSKY: Your Honor, I am just assuming for the purposes of this questioning Mr. Rabin's set of facts.

THE COURT: All right.

Q You were also asked about your conversation with the United States Attorney. Is it fair to say that when you left your conference with the United States Attorney that he believed and you believed that Mr. Miller would be indicted whether or not he turned over additional information concerning another payment?

A I would say yes.

Q And to have not indicted Mr. Miller thereafter would, in effect, have been contrary to that understanding you had with the United States Attorney; is that correct?

A If we recommended against, to the grand jury against indicting, it would have been contrary to his order to Mr. Giuliani and myself.

Q And Mr. Rabin also mentioned that at various points during his conversations with you and Mr. Giuliani he was asking how Mr. Miller could get out of the indictment, and he was insisting that Mr. Miller get out of the indictment.

At that time, during those times, were you and Mr. Giuliani continually repeating your position that in view of the admissions Mr. Miller had made in the grand jury and the other overwhelming evidence in your case that it was highly improbable that Mr. Miller could ever get out of this indictment?

A That is correct.

Q And I think his Honor has already cleared this up, but, with relationship to those factors that have been talked about, is it your testimony that they were mentioned solely as a matter of educating Mr. Rabin as to how cooperating defendants in this District sometimes avoid being indicted?

A That was the context of those factors, yes.

Q Mr. Rabin made a point that your affidavits don't speak of evidence of a new and separate crime.

Isn't it a fact that Mr. Rabin's own affidavit speaks about new evidence?

A To my recollection, that was Mr. -- that is in Mr. Rabin's affidavit, yes.

MR. RABIN: Would you tell me the page at which a separate crime is referred to?

MR. KURIANSKY: That wasn't the question.

MR. RABIN: New evidence?

MR. KURIANSKY: Yes.

A I might point out, Mr. Kuriansky, these affidavits were never intended by me, and as far as I know by Mr. Giuliani, to cover every word uttered in the four conferences that we had.

Q Well, I think a better question would be: Isn't it a fact that those factors are not spelled out in your affidavit and Mr. Giuliani's affidavit because those factors were never discussed in terms of a commitment to Mr. Rabin's client?

A That is correct. They were never put in the context that Mr. Rabin now wants to fit them into.

Q Incidentally, did Mr. Rabin ever ask the Government for a formal grant of immunity for his client?

A Not to my recollection.

Q Did he ever ask to reduce this alleged understanding concerning factors, did he ever ask that that be formalized or committed to writing of any kind, to guarantee his client's rights?

THE COURT: Doesn't he have the right, however, to rely upon the integrity of the Government officials without that? Are you saying that merely because he didn't get that formalized, therefore, it's invalid?

THE WITNESS: No, your Honor, if there is a situation that I have been a part of that a defendant has ever been given any type of immunity, it's either been put on the record in the grand jury or a letter has been given.

Now, it may be that other Assistants have done it different ways, but --

THE COURT: Yes, but that is not -- I don't even understand that to be the case here. I understand that you made a promise, one promise, that was kept.

THE WITNESS: That is correct.

THE COURT: I don't understand it was formalized. You merely are not indicting Mr. Miller for having testified falsely to the FBI because you promised him you wouldn't do it. You didn't do that -- there was no formal immunity given to him.

THE WITNESS: No, sir.

THE COURT: Number two, you have now decided that you are being over technical in respect of indicting him on the conspiracy count, some relationship to that, and you have decided that you are going to redraft the indictment so he will not be charged with that crime. Now, you haven't given him immunity about that, formal -- that is merely something that you and Mr. Giuliani and the United States Attorney have agreed to do.

THE WITNESS: That is correct, your Honor.

THE COURT: Well, even then -- so that I don't understand -- I understand the issue about formalization, but that is not really the question.

THE WITNESS: I think what Mr. Kuriansky was bringing out was that there was no discussion about immunity, there was no request for any formalized promise, there was no promise ever made.

THE COURT: I understand that. But that does not mean, that doesn't go to what is really the dispute here, and you have told your version of it, and Mr. Rabin contests, and that is whether you made a promise, you and Mr. Giuliani in fact promised that you wouldn't indict, without formalization and so forth. You don't have to get into formalization. That is not the issue here.

MR. KURIANSKY: I wasn't suggesting that if the informal promise had been made that the Government representatives would not have lived up to it.

THE COURT: Mr. Miller ~~is~~ not even contending that is the issue. The issue is that a promise was made, and he's contending that it was made, that you were going to keep the promise.

All right. So let's keep this on what's before us.

Q On the subject of that commitment concerning the false statements, the Government did honor that commitment and not indict Mr. Miller for false statements?

A That is correct.

MR. KURIANSKY: I have nothing else, your Honor.

MR. RABIN: Your Honor, I missed one question. This is actually direct. May I correct my oversight?

THE COURT: You mean you want to ask him another question that you missed?

MR. RABIN: Yes.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. RABIN:

Q Does it accord with your recollection, Mr. Jaffe, that at that final conference, prior to Mr. Miller testifying on June 29th, that is, the evening of June 26th, he was warned no less than six times in the space of that conference that he should understand, in substance, that no promises were being made to him with regard to whether or not he would be indicted, that in deciding what he should do, he should assume that hewould be indicted and as far as anyone could predict, he would be indicted, and he should therefore act accordingly, that he should understand that our hands would not be tied by the information he wanted to give us, give the United States

Attorney, and that the United States Attorney was free to use it any way that they saw fit, against him or against any possible defendant in the case, and tha t the only benefit that would flow to him would be after conviction, when his cooperation on this subject would be made known to any Judge who might sentence him?

A That was on the 27th at night.

Q All right. On the 27th, Mr. Jaffe, in words or substance, that warning was given to him no less than six times; is that your tasitmony?

A I would say more.

Q More than six times?

A Absolutely.

Q How long did that conference take on the 26th? It was in the evening, was it not?

THE COURT: He said the 27th.

Q 27th. It was in the evening?

A It was on the evening of the 27th, started around ten after 7:00 and I think concluded around 9:00 o'clock, perhaps later.

THE COURT: Is this the conference in which the information about the $29,000 check was actually given?

MR. RABIN: Yes, sir, that is correct.

A That is the conference.

MR. RABIN: I have no further questions.

MR. KURIANSKY: I have one other.

RECROSS-EXAMINATION

BY MR. KURIANSKY;

Q Mr. Jaffe, do you recall the conversation, I think it was in the hallway of your offices, just before Mr. Miller left for Florida to secure this check?

A Yes, I do.

Q Would you tell us about that conversation?

A Yes, sir. I told Mr. Miller, as he was going to catch a plane to go down to Florida, that if he thought that he was buying his way out of the indictment by flying to Florida to get the check, when he got to Florida he ought to stay there and not bring it back.

THE COURT: This is after the conference on the 27th?

THE WITNESS: This was as the conference concluded, your Honor, yes.

THE COURT: All right.

Q Did you have a conversation again with Mr. Miller on the 29th, just prior to his going in to the grand jury?

A Yes, I did.

Q What was the substance of that conversation?

A I told Mr. Miller, among other things, that if he thought he was buying his way out of the indictment by testifying in front of the grand jury about the check he had told us about, he ought to forget about testifying and take the Fifth and not testify.

Q And during that grand jury appearance on the 29th, Mr. Miller was advised that he was a target?

A Yes, he was.

Q And was he specifically advised, asked in the grand jury whether he had discussed the testimony he was about to give about this check with his attorney prior to going in to the grand jury?

A Yes, he was.

Q And he was then told that this evidence could be used against him at a later date?

A Yes, he was.

Q And he went ahead and testified about that check?

A That is correct.

Q And did he tell you that he understood the warnings you had just given him?

A Yes, he did.

MR. KURIANSKY: All right.

THE COURT: Thank you.

(Witness excused.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA :

vs. :

BERTRAM L. PODELL, :

Defendant. :

- X

DEFENDANT's
STATEMENT PURSUANT
TO RULE 9(g)
76 Civ. 509 (KTD)

Pursuant to General Rule 9(g) of the rules of this Court, Defendant submits the following statement of material facts as to which Defendant contends there is a genuine issue of fact to be tried:

1. Defendant pleaded guilty to part of Count 1 and Count 5 of the indictment in United States v. Podell, et al 73 Cr. 675, to the extent that, and only to the extent that while a Member of Congress and acting as a lawyer for FLORIDA ATLANTIC AIRLINES, and paid by LEASING CONSULTANTS, INC., he appeared before various federal agencies including the CAB and the FAA and advocated the interests of the said FLORIDA ATLANTIC AIRLINES; that he was indirectly compensated by his law firm for these appearances.

2. Defendant contends that he did not receive any of the following sums and that none of them were paid as compensation for appearances or services prohibited by Section 203 of Title 18 USC or as part of a conspiracy to violate said section nor were they encompassed within any plea by defendant, to wit:

(a) Check #1931 in the amount of $10,000. payable to PODELL & PODELL dated January 19, 1969, drawn by LEASING CONSULTANTS, INC.

(b) Check #1119 in the amount of $2,350. dated March 13, 1969, payable to PODELL & PODELL, drawn by LEASING CONSULTANTS, INC.

(c) Check #1059 in the amount of $29,000. dated May 1, 1969, drawn by MARTIN MILLER, payable to the CITIZENS COMMITTEE for BERTRAM L. PODELL.

3. Defendant contends that he did not receive $41,350 in the form of payments to the Citizens Committee for BERTRAM L. PODELL and in the form of fees to the law firm of PODELL & PODELL.

4. Defendant contends that none of the monies referred to in the complaint were received by him as com-

pensation for services rendered by him or another before the Civil Aeronautics Board or the Federal Aviation Administration in connection with matters pending before those agencies involving FLORIDA ATLANTIC AIRLINES INC.

5. Defendant contends that plaintiff had actual and imputed notice and knowledge of all of his activities on and after December 19, 1968, and through May, 1969.

Dated: New York, New York
April 5, 1977

DANIEL M. SHIENTAG
Attorney for Defendant
Office and Post Office Address
160 Broadway
New York, New York 10038
Tel. (212) 267-0363

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x
UNITED STATES OF AMERICA :
:
vs. : AFFIDAVIT
:
BERTRAM L. PODELL, : 76 Civ. 509
:
Defendant.
- x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

BERTRAM L. PODELL, being duly sworn, deposes and says:

1. That I am the defendant in the above named action and am familiar with all the facts and circumstances set forth herein.

2. On October 1, 1974, before Hon. Robert L. Carter, District Judge of the United States District Court, Southern District, I entered a plea of guilty to a violation of the laws prohibiting members of Congress from receiving compensation indirectly (such as through law firms) in connection with matters in

which the United States is a party or has a substantial interest, for services, before departments, agencies or officers of the United States. The nature and extent of the plea was contained in and limited by the allocution as follows:

> "THE COURT: *** What I would like to hear from you, tell me in your own words what it is you did in respect to the counts you are pleading guilty to so I can be satisfied that you are, in fact, guilty.
>
> DEFENDANT PODELL: If the Court pleases, while a member of Congress and acting as a lawyer for Florida Atlantic Airlines and paid by Leasing Consultants, Inc., I appeared before various Federal agencies, including the CAB, the FAA, and advocated the interests of the said Florida Atlantic Airlines.
>
> I was indirectly compensated through my law firm for these appearances before the CAB and the FAA while a member of Congress.
>
> I did not at the time know that I was violating any law, but I intended to do what I did.
>
> THE COURT: I will accept the plea.
>
> MR. LaROSSA: I think Mr. Giuliani's statement should be read in conjunction with your acceptance of the plea, your Honor. It defines the limits.
>
> MR. GIULIANI: Your Honor, the government is agreeable to taking the plea to count 1, the conspiracy count, and count 5, the conflict of interest count.
>
> It is the government's view that a plea to count 1 encompassing paragraphs 1 and 5B and C, and to count 5, satisfies the interests of justice in this case.

> It is the government's position that the plea to the conspiracy count admits that the object of this conspiracy was to violate the conflict of interest law and thereby to defraud the United States.
>
> The government also understands that the defendant is not in any way admitting the bribery objects of the conspiracy. He is admitting the conflict of interest and the defrauding to the extent that it is meant by "conflict of interest.""

The foregoing was the extent and limit of my plea and the admissions made by me concerning violations of law, and I was so advised by my counsel, James LaRossa, at the time the plea was entered. A thorough understanding of the record of the trial before Judge Carter, is essential to an understanding of the plea.

It was part of my proof, and apparently undisputed, that in February, 1969, a retainer arrangement was negotiated between the firm of PODELL & PODELL and LEASING CONSULTANTS, INC., providing for a payment of $1,000 per month. In February, 1969, I performed services in Nassau, the Bahamas, for LEASING CONSULTANTS, INC. and a fee of $1,000. was paid to the firm of PODELL & PODELL. Also in February, 1969, my father, HYMAN PODELL,performed services in Puerto Rico at the request of LEASING CONSULTANTS, INC. and a fee of $1,350.00 was paid to the firm of PODELL & PODELL.

The firm of PODELL & PODELL sent bills to LEASING CONSULTANTS, INC. under the retainer agreement described above for a number of months commencing with March 1, 1969, and continuing throughout that year.

In March and April, 1969, I performed certain acts from which it could have been inferred that I was advocating the interest of LEASING CONSULTANTS, INC.'s subsidiary, FLORIDA ATLANTIC AIRLINES, before the Civil Aeronautics Board and, possibly, the Federal Aviation Administration.

There was no question but that I received a share of the fees paid with respect to my trip to Nassau, and my father's trip to Puerto Rico. There were, in fact, no fees ever paid under the retainer agreement and, consequently, it was not possible to establish that I would not have shared in those fees had they been paid. It was also not possible to establish that the firm which had the retainer agreement with LEASING CONSULTANTS, INC. was, in fact, separate, distinct and independent of the firm of which I was not a member.

Having all of this in mind, and after conferring with my counsel, MR. LaROSSA, I concluded that, technically, I had committed a violation of the conflict of interest statute to the extent that I was a participant in the firm which had received either compensation or a promise to pay compensation from LEASING CONSULTANTS, INC. at a time when I could be deemed to have been advocating its interest before Government agencies.

The discussions with my counsel occupied many hours. We discussed at length a number of consequences which might flow from the entry of a guilty plea and, in particular, we discussed, at considerable length, the limits and extent of admissions which I might be deemed to have made in the entry of such a plea.

I was advised then and I was under the belief at the time I entered the plea (and I am still under the same belief) that the sole admission made by me was that set forth and contained in the allocution at the time of the entry of the plea, namely, that I was indirectly compensated through my law firm for appearances and advocacy in behalf of FLORIDA ATLANTIC AIRLINES before certain Federal agencies.

There was not at that time or at any time prior thereto, or subsequent thereto, the slightest intention on my part to in any way connect my having travelled to Freeport, Bahamas, in December, 1968, and the payment made by LEASING CONSULTANTS, INC., therefor in the amount of $10,000, or my trip to Nassau, and the payment therefor of $1,000, or my father's trip to Puerto Rico, and the payment therefor of $1,350, with any form of quid pro quo for advocacy of LEASING CONSULTANT, INC.'s interests before United States agencies.

It might also be observed that at the time of the entry of the plea and at the allucution, the Government specifically conceded that the admission was limited to my having engaged in activities which constituted a conflict of interest.

It should, of course, be kept in mind that it was then and is now perfectly proper for a Congressman to engage in private practice and to represent parties in matters in which the United States may have an interest before the Federal courts, the State courts, any foreign countries, (such as the Bahamas) before municipal agencies and, indeed, anywhere and everywhere except before agencies and departments and officers of the United States enumerated in the conflict of interest statute.

BERTRAM L. PODELL

Sworn to before me this
20 ~~5th~~ day of ~~April~~ March, 1977
[illegible]
Notary Public State of New York
Qualified Nassau County
Com. Exp 3/30/77

VOL 10

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA vs. BERTRAM L. PODELL and MARTIN MILLER, Defendants.	Before: HON. ROBERT L. CARTER, District Judge and a Jury ~~73 CRIM. 765~~ 73 Cr. 675

New York, September 27, 30, 1974
October 1, 1974

ICT COURT
NOV 12 1974
S. D. OF N. Y.

STENOGRAPHER'S MINUTES

10

Q After you found out he was indicted did you have occasion to discuss his reputation for truthfulness and honesty with other members of the community?

A With the members of my group and we gave him an honorary award in April of this year.

MR. LaROSSA: Thank you.

MR. GIULIANI: No questions.

THE COURT: Thank you very much.

MR. LaROSSA: The defendant calls Bertram Podell.

BERTRAM L. PODELL, a defendant, called as a witness on his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LaROSSA:

Q What is your profession, Mr. Podell?

A I am an attorney.

Q Are you admitted to practice law in the State of New York?

A Yes, I was admitted in 1950.

Q Will you tell us how old you are, sir?

A 48.

Q Will you tell us whether you are married?

A Yes, I am married. Mrs. Podell is here.

Q Do you have any children?

A Three children, ages 18 -- 19, 15 and 11.

Q Mr. Podell, prior to the admission to practice law in the State of New York did you attend any formal schools?

A Yes, I attended high school and I went to St. Johns University. I was interrupted in my studies. I served in World War II in the Navy, and after that I resumed my studies in St. John's and went on to law school thereafter, Brooklyn Law School.

Q In addition to your right to practice law in this state do you hold any official position?

A Yes, well, at least, until the end of the year I am a congressman, until December this year I am a congressman, United States congressman

Q When were you elected to the United States Congress?

A I was elected in a special election in February of 1968. I commenced service, I was sworn in in the middle of March, '68.

Q From what district were you elected?

A The 13th Congressional District of Brooklyn, New York.

Q Can you tell us basically what that district comprises?

A Well, it contains a number of geographical areas known as Flatbush, Boro Park, Bensonhurst, Brighton Beach, Coney Island, Sheepshead Bay.

Q That section of Brooklyn?

A Yes, the central part of Brooklyn, actually.

Q Mr. Podell, have you been a resident of that particular area all of your life?

A Yes, I was born and raised there.

Q Now, prior to the time you were elected to the House of Representatives did you hold any official position prior to that?

A Well, in 1954 I was elected to the New York State Legislature as a state assemblyman and I served continually in that job until 1968, at which time I resigned from the New York State Assembly to run for the Congress of the United States.

Q Will you tell us when that election in 1968 was, sir, that you were elected?

A I believe it was February 20th was the date of the special election. It was not a regular election; it was a special election. My predecessor had resigned to become a Supreme Court justice and I ran in his place in a special election in February of '68.

Q Does that mean that there were no other elections at that time?

A I think that was the only election in the country, as a matter of fact.

Q Thereafter and during the year '68 did you run in any other elections to retain your post to which the people had elected you as a member of the House of Representatives?

A Yes. As a matter of fact, in the year '68 all I did was run for public office. I ran in a special election, February 20, 1968, which was quite a contested election, it was a very tough one. Again in June, the end of June, '68, the same individual that ran against me in the special election ran against me in the Democratic primary, and again I won. And then I ran in November of '68, again three months later, in the general election, at which time again I won,

b3 and I was elected.

Q Mr. Podell, you have heard talk about a law firm called Podell & Podell?

A Yes, sir.

Q Will you tell us when the law firm of Podell & Podell was founded, if you can?

A Well, I would assume that it took place some fews after my admittance. I was admitted in 1950 and I thereafter served my clerkship in a law firm in Manhattan, and then went out on my own for a couple of years, and then went into business with my dad and we organized the firm of Podell & Podell.

Q At that time, sir, was it your father and you as partners in this law firm?

A Yes, we were.

Q Did there come a time when any other partners joined that firm?

A Well, I have a younger brother who some years became a member of the firm as a junior partner, and then a few years thereafter became a full partner in the firm. Dad sort of ran the show, and he said, "You are now a junior partner," and so he was a junior partner, and then a few years later dad say, "You are a full partner," and that is the way it was.

Q Mr. Podell, were there associates in the law firm from 1953 to the present date whose names were not Podell and who were part of the law firm?

A Yes,there were many.

Q Did there come a time, sir, after your election to the United States Congress that you had a conversation with any of your law partners about the practice of law?

MR. GIULIANI: I object to that, your Honor.

THE COURT: Well, I think the question is a little too broad for me to understand what relevance it has here. So I am going to sustain the objection, Mr. LaRossa. You may focus on it, if you will.

Q After your election to the House of Representatives did there come a time when you discussed with your law partners the practice of law while you were a United States congressman?

A Yes, sir. It was discussed on a number of occasions, but I would like to call the attention of the court to a particular discussion that was held almost a few days after we had won our special election --

MR. GIULIANI: Objection, your Honor.

THE COURT: The objection is overruled. I assume what is coming is the practice which would be separate.

A -- and at that time there were a number of individuals present. My dad was present and my brother Herb was present, Mr. Sternfield, Mr. Reiben, all individuals who were associates, Mr. Sheintag, and even others who had just come in. It was a constant flow of individuals with congratulatory handshakes, other attorneys on the floor, upstairs and downstairs, and we discussed at that time the possibility that matters would come in the law firm that it would be sort of improper or would not create the propriety for a member of Congress to be involved in, and it was suggested at that time that we organize a second law firm without Bertram L. Podell in the same manner that my predecessor had done. I had worked for him as a young clerk and he had a firm with his name and without his name, in the same manner that Congressman Celler's law firm, they had part of a law firm with his name and part without for matters with which the federal government may or could possibly be involved.

Q Was there any further discussion at that time about the setup of another law firm?

A Yes. We at that time decided to --

MR. GIULIANI: Objection. Could we have who said what in this conversation, who were the participants in the conversation and what did they say?

THE COURT: The participants, he said, were his partners.

MR. GIULIANI: I am not sure who is speaking when he says "we."

Q Do you recall specifically at that time who said what?

THE COURT: I don't think that is necessary. It seems to me that the necessary thing is the end result, what was done. So the objection is overruled.

Q Will you continue, please?

A Yes, sir. During the course of the discussion it was decided, and, as a matter of fact, I instructed my brother Herbert to organize a separate law firm without my name so that any matters that would come in that may have this improper appearance, that a congressman should not represent, would be handled by that firm, in which I would not participate insofar as fees or have anything to do with. I instructed Herbert, I think, or my dad, either one, to order stationery and to open up a bank account, which is the only indication of a separate firm.

We have no agreement, a partnership agreement per se. I think lawyers are exempt from the requirement of having an official partnership agreement and filing it, and, as a matter of fact --

THE COURT: Mr. Podell, I'm sorry, but what I would urge you to do is tell us the facts. You are here as a fact witness, not to give us an interpretation of legal theories.

THE WITNESS: Yes, sir.

Q Did you file a partnership agreement?

A No, we do not have any partnership agreement in our regular Podell & Podell firm, nor do we have one with the other Podell & Podell firm.

Q Was it your understanding at that time and your understanding now that there is no requirement for lawyers to file a partnership agreement?

A Yes, my dad--

MR. GIULIANI: Objection. That is the answer.

THE COURT: Objection sustained. There is no issue about that.

MR. LaROSSA: I ask your Honor to take judicial notice and to tell the jury that the law in the state does not require attorneys to file partnership agreements.

THE COURT: There is no issue of that. The only fact I have is Mr. Podell said he organized a second law firm. If that is the end of that, let's go on to something else.

b4

Q Was stationery ordered without your name?

A Yes. I asked my brother or my dad to order stationery without my name and asked my brother, I believe, to go down to the bank and open a bank account in the name of Podell & Podell without the name Bertram L. Podell.

Q Did you have a further conversation with your brother at some later date about whether or not that bank account was ever opened?

A Yes, some weeks later he showed me the stationery, the new stationery, and also I had asked him whether or not the bank account was opened and he told me that he went down to the bank, which is right downstairs where our offices are at 160 Broadway, he went downstairs to the bank and he spoke to the manager and he said he would like to open up an account with Podell & Podell without the name Bertram L. Podell, and the bank manager or the individual to whom he addressed himself said, "Fine. How much would you care to deposit?" And Herbert had responded, "Well, I have not gotten any checks in yet to make a deposit; we are anticipating earning fees and we want to establish the firm." He said, "Well, there is no sense in opening up a bank account without money. When you bring in your first check it won't be a problem, we'll open up the account for you."

Q Mr. Podell, in July, 1970, or shortly thereafter was there a change in the firm of Podell & Podell which included or did not include some of the old associates of that law firm?

A Yes.

Q Do you understand my question?

A I think I do. A number of individuals --

THE COURT: What is the date?

MR. LaROSSA: July, 1970.

THE COURT: I'm sorry. Continue.

A (Continuing) There were a number of individuals that were associated with our law firm, such as Mr. Reiben, Mr. Cohen, a Mr. Sternfield, Mr. Messiti, individuals who for one reason or another had left our firm at the time, and we decided to prepare new stationery to reflect the new members of the firm.

MR. LaROSSA: I ask that this be marked.

xx (Defendant Podell's Exhibit C marked for identification.)

Q Mr.Podell, I show you Defendant's Exhibit C for identification. I ask you if you can identify that?

A Yes, sir.

Q What is it?

A This is a plate, a printer's plate or an engraving that is used by printers in the preparation of stationery, and on or about -- it was on here -- apparently on October 20, 1970, we had made new stationery at that time because Mr. Rothman came in our firm, and new stationery was ordered, and this is the printer's plate for the stationery that was ordered on the 20th of October, 1970.

Q Is that for the firm of Podell & Podell?

A This is for the second firm of Podell & Podell, without Bertram L. Podell.

MR. LaROSSA: I offer this in evidence as Defendant's Exhibit C.

MR. GIULIANI: I am going to object to this on the grounds that this was ordered, it seems to me, at least a year after the last bill that was sent out by Podell & Podell and, therefore, would be irrelevant.

MR. LaROSSA: I don't think so, and I will prove it to you in a few minutes.

MR. GIULIANI: I am going to object to it.

THE COURT: I am going to allow it subject to connection.

MR. LaROSSA: May I read it to the jury? Would you like me to connect it first? Fine.

Q Mr. Podell, did that engraver's plate produce stationery??

A Yes, sir.

Q And did you have the stationery that is reflected by that plate in your law office at 160 Broadway some time during the year 1970?

A Yes, sir, certainly.

Q Was there stationery in your law office at 160 Broadway, the law firm of Podell & Podell prior to that without your name on it?

A Certainly, yes.

Q And what occurred to that stationery once this stationery was produced?

A Well, in 1970 or prior to this date when Mr. Reibe and Mr. Messiti left our firm, we had ordered new stationery and discarded or threw away all of the old stationery, and that refers to all of the various stationery that we did have.

Q Are you telling us that that plate was the successor to the prior stationery of Podell & Podell without the name Bertram L. Podell?

A That is correct. This supplanted the stationery that was ordered in February or March , '68.

Q In October, '70, the date that that plate reads, at that time were you ever interviewed by any agents of the FBI?

A No, sir.

MR. GIULIANI: Objection.

THE COURT: The objection is overruled.

Q Had you heard one word about the investigation in this case prior to 1970?

A That didn't come about until over a year later, sir.

THE COURT: Come to the side bar.

(At the side bar.)

THE COURT: Isn't there some stationery from Podell & Podell, the second firm, in regard to some bills?

MR. LaROSSA: No. I ask now that this be submitted to the jury since it has now been connected.

THE COURT: You are going to object?

MR. GIULIANI: Yes.

THE COURT: Overruled.

MR. LaROSSA: Can I say one thing to you before your Honor leaves? There is one witness, who is the majority leader of the Congress, Mr. O'Neill, who is expected some time today. He is an extremely busy man. May we suspend when he comes?

MR. GIULIANI: Can I just put on the record --

THE COURT: This is in connection with something I meant to say this morning. I don't know how many character witnesses you are going to have.

MR. LaROSSA: Very few more.

THE COURT: It may not arise, but I thought the question that you raised about Mr. Koch, the question about Mr. Brasco being convicted, I think that was improper. However, I do think he could have been asked and should have been asked, the government had a right to ask as to the charges that were pending against Brasco, and I think under those circumstances the impropriety is de minimus. I say this on the record so on any future occasion you will know how far I think you can go.

MR. LaROSSA: May I repeat the motion I made for the withdrawal of a juror and the declaration of a mistrial at the time Miss Chisholm was on the stand with reference to the question about Mr. Brasco in conjunction with the fact that you allowed that testimony to come before the jury?

THE COURT: I think it is an entirely different matter. The government has a right to try to attack the credibility of character witnesses, and I think that was proper.

MR. GIULIANI: I am going to object certainly not to Mr. O'Neill, but to any further character testimony as being cumulative. This would be the sixth character witness.

THE COURT: No, I am not going to grant that.

(In open court.)

Q Mr. Podell, in October of 1970 had you heard anything about an investigation that preceded this case?

THE COURT: That was the last question and it was answered.

MR. LaROSSA: I withdraw it, your Honor.

Q Mr. Podell, may a Congressman practice law?

A Of course. I think most Congressmen are lawyers and practice law.

Q Is it your understanding that a public official who is associated with a law firm must practice law?

A Yes. A man who is a member of Congress, who is associated with a law firm, according to the rules of the Bar Association, must be actively engaged in practice. He just can't hang his name up on a door and say, "I am with this firm," but he must be actively engaged in the practice to support the fact that he is a member of the firm.

Q Mr. Podell, in 1968 when you were elected to the House of Representatives, were you appoined to any committees?

A Yes.

Some time after, I would imagine, the end of March or April of 1968, I was appointed to two committees.

The first is the committee on House Administration, which deals with how many typewriters you get. They don't give freshmen Congressmen very important committees. It deals with all of the questions of housekeeping, stationery, and things of that kind.

And the other committee was commonly known as the Space Committee, or the Committee on Science and Astronautics, and that committee had two jurisdictions, one over the National Institute of Health, and jurisdiction over the NASA space program, a trip to the moon, and side issues of that kind.

Q Did it have any jurisdiction over routes that a particular airline would take?

A It had no jurisdiction or connection with anything to do with aviation.

2 Q Did it have anything to do with the CAB?

A Absolutely not.

Q Did it have anything to do with the FAA?

A It had nothing to do with anything other than the space program, which is talking about going to the moon, and explorations, et cetera, et cetera, and the sky lab, et cetera.

Q Mr. Podell, do you know a gentleman by the name of Mel Hiko?

A Yes.

Q Did you see him testify here?

also explained something to me about Route 9 for the first time.

He said, "I can't understand what the problem is."

It was at that time when Marty suggested, "Bert, why don't you make an inquiry? Maybe you can get some information that we don't have."

And this was the time I called in, and this had to be on December 19th, and I know that because the letter is dated December 19th.

Q You are referring to Exhibit 13, Mr. Podell (handing)?

A Yes.

Q Is that the letter you wrote to John Dregge?

A That's the letter I asked Peg Murphy, my administrative assistant, to send to the Congressional liaison of the Civil Aeronautics Board -- I didn't know who he was but apparently she looked in the book and found out who he was. She sent him a letter in which I inquired as to what the problem was.

Q On December 19, 1968, did you cause Exhibit 12 to be prepared and mailed?

A Yes.

Q What is Exhibit 12?

A That's a bill for professional services rendered.

Q To whom?

A Podell & Podell -- I'm sorry: to Leasing Consultants.

Q For $10,000?

A Yes.

Q What was your understanding, sir, at the time you mailed that bill to Leasing Consultants about the work that you had done or was going to be done with respect to that bill?

A It is the custom of my office to perform work and send a bill. We performed the work for Leasing Consultants, which was going to the Bahamas, and after that we send the bill which recites "For professional services rendered, $10,000."

I called up my office and I instructed either one of the secretaries or my dad or my brother, and I said, "You know, send the bill out to Leasing Consultants. I have returned from the Bahamas."

Q Was this the very dayyou had returned from the Bahamas?

A It probably was, or the next day.

Q Exhibit 13, which is a letter you wrote to

Mr. John Dregge, was that letter written by you as an attorney for Leasing Consultants, Martin Miller, or Florida Atlantic Airlines?

A No. It had nothing to do with my representation of Leasing Consultants. That was consummated and finished when I returned from the Bahamas. I did my job.

Q When you wrote that [illegible] to Mr. Dregge, tell us what you intended by that letter?

MR. GIULIANI: Objection. The letter speaks for itself.

MR. LaROSSA: I think intent is an issue here. This man's intent should be before the Jury.

MR. GIULIANI: Not by a subserving declaration as to his intent.

THE COURT: The objection is sustined.

Q What was the purpose in your writing that letter?

MR. GIULIANI: Same objection, your Honor.

MR. LaROSSA: May I make an offer of proof or argue at the side bar. I don't want to make a statement in front of the jury.

THE COURT: The objection is sustained.

I will explain my ruling at the side bar.

MR. LaROSSA: It is crucial. May I have a moment, please?

(At the side bar.)

THE COURT: I don't believe that we can have any self-serving declarations about he intended this or intended that. I think what you brought out is the fact that he sent a bill for $10,000, which was the custom and practice of the law firm, to send a bill for services rendered. I don't think you can ask him about his intent.

6 MR. LaROSSA: He is aware of that. He is aware of that.

THE COURT: You asked him shether he was writing that as a lawyer and he said no.

MR. LaROSSA: "What did you intend the letter to be?"

That's the next question and he has an answer.

May I make an offer of proof?

THE COURT: Sure.

MR. LaROSSA: "The intention was that I was writing this letter acting for a constituent."

THE COURT: You asked him if he was acting as a lawyer and he said no.

How was he acting? Ask him that, not what he intended to do.

MR. LaROSSA: Is your Honor stopping me from putting his state of mind before the jury?

THE COURT: I am not. What you regard as his state of mind is a self-serving statement. You may put his state of mind before the jury as to objective facts. The first objective fact, as you indicated, he sent a bill.

The second objective fact, you asked him if he was acting as their lawyer when he wrote the letter. I think you asked him that and he said no.

You can ask him some way if he wrote the letter for a constituent, but you are not to ask him what he meant by it.

MR. LaROSSA: Can I ask him what he thought about before? It is a state of mind. This is not a self-serving declaration.

When a defendant wants to say, "This is what I thought when I wrote the letter," that is his intent.

THE COURT: I don't think it is, Mr. LaRossa.

I think my suggestion to you is for you to bring it out the way you brought out the other. If you ask this man what he meant to do he will make statements and I don't think that is proper.

MR. LaROSSA: He will make a statement as to what he thought he was doing at that time.

THE COURT: He can say he was acting for a constituent, he was not acting as a lawyer. Ask him that, but he was acting for a constituent. You don't have to ask him his state of mind.

MR. LaROSSA: You are not planning to take a coffee recess or something?

THE COURT: Not now.

MR. LaROSSA: I want to tell him, otherwise these answers are going to come out. That's the only reason --

MR. GIULIANI: Can we go back to it after the luncheon recess?

MR. LaROSSA: It throws off my timing. I am not trying to --

THE COURT: I don't want to take a recess.

MR. LaROSSA: I will live with it, your HOnor.

(In open court.)

THE WITNESS: Your Honor --

MR. LaROSSA: I think Mr. Podell wants to say something to me, your Honor.

THE WITNESS: Yes, your Honor.

THE COURT: You may confer.

(Mr. LaRossa and the witness conferred.)

BY MR. LaROSSA:

Q Mr. Podell, when you wrote the letter to Mr.

Dregge that is before you right now, were you writing that letter as a United States Congressman?

A Yes. This is the identical letter that I write in a thousand cases that have appeared before me as a Congressman. This is the normal inquiry letter we make.

Q Were you making that inquiry letter as you would for a constituent and not for a client?

A Mr. LaRossa, I write letters like this every day of the week.

MR. GIULIANI: That's a yes or no answer, your Honor. He asked it in a leading form. It calls for a yes or no answer and long discourse.

THE COURT: You can answer that yes or no.

THE WITNESS: Repeat the question.

MR. LaROSSA: May I reframe the question, your Honor?

THE COURT: The question is framed very well.

MR. LaROSSA: I wanted to save the time of the Court.

(Record read.)

T5

(Question read.

A Yes, absolutely. This is merely a letter requesting information.

Q Was your purpose in writing that letter to seek information?

MR. GIULIANI: Objection.

A Yes, sir.

THE COURT: Mr. Podell, I realize that I am a little slow sometimes. You are going to have to live with it and wait while an objection is being made.

The answer has been given. I will let it stand.

Q During the conversation that you had with Mr. Juliana and Mr. Miller in your congressional office did you ever hear the expression "show of strength"?

A No, sir.

Q Was that said in your presence?

A Absolutely not.

Q Did there come a time that Mr. Miller, Mr. Juliana and whoever else was present left your congressional office?

A Yes, sir.

Q I show you what has been marked Exhibit 33 in evidence and ask you if you have ever seen that before.

A Yes, I have.

T5

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Q Was that said in your presence?

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Q Did there come a time that Mr. Miller, Mr. Juliana and whoever else was present left your congressional office?

A Yes, sir.

Q I show you what has been marked Exhibit 33 in evidence and ask you if you have ever seen that before.

A Yes, I have.

Q Is that the letter you received in response to your letter to Mr. Dregge of December 19th?

A Yes, sir, it was.

Q Did you do anything with that letter after receiving it?

A Well, I do what I normally do in all these situations, I probably made a photostat and sent it to Marty Miller advising him of the answer that I received fro Mr. Dregge in connection with the inquiry that I have made.

Q Do you know, sir, whether you made a copy of Exhibit 13 in evidence, the letter that you wrote to Mr. Dregge?

A Yes, Mr. LaRossa, we do this every day of the week in our office.

MR. GIULIANI: Objection, your Honor. Could we have an answer to the question, instead of a discourse.

Q Did you send a copy of that exhibit to Mr. Miller?

THE COURT: He said, yes, he did. He said he had a copy made of it, a copy of both letters.

Q Mr. Podell, is it your practice that when making an inquiry on behalf of a constituent or receiving a response on behalf of a constituent that you send a copy of the inquiry or the response to that constituent?

A In almost every case.

Q Did there come a time subsequent to your receiving the letter from Mr. Dregge, which is marked as Exhibit 33 in evidence, when you met Martin Miller again?

A Well, Marty and I had become quite friendly at that time. Marty had three lawyers in Washington, the SEC lawyer, the --

MR. GIULIANI: Objection, your Honor. That is not responsive to the question. Will the witness please confine himself to answering the question.

Q Stay close to my questions. Did there come a time when you met Mr. Miller and Mr. Zorovich subsequent to January 7, 1969?

A On a number of occasions.

Q Did you meet Mr. Miller socially during that period?

A On a number of occasions.

Q Was he in Washington often during the early part of 1969?

A Almost, I would say, three or four times a week sometimes.

Q On those occasions would you have lunch, dinner, a drink, or just socialize with Martin Miller?

A On a number of occasions.

Q Were there occasions when you socialized with him

BERTRAM L. PODELL, resumed.

THE CLERK: Congressman Podell, you are still under oath.

DIRECT EXAMINATION (Continued)

BY MR. LaROSSA:

Q Mr. Podell, before the lunch break we were talking about your appearance at the American Consul's office in Nassau. Did you on that day, to the best of your recollection, sign a log, an official log, when you entered that office?

A Yes, sir.

Q After meeting with Mr. Laverity, is it your testimony that you then returned to the United States?

A Yes.

Q After returning to the United States, did you go back to Washington, sir?

A I probably went back to Washington that day or the next day or the next day.

Q Did there come a time thereafter between the date that you went to the Bahamas in February and March 10th when you had occasion to meet with Martin Miller and/or Michael Zorovich?

A Yes.

Q Tell us where that meeting took place?

A We had a number of meetings. Sometimes at my office and sometimes at lunch, and sometimes for a drink.

There was one particular meeting, I recall, that took place some weeks after we returned from the Bahamas in which Marty came to me with a smile and he said, "We have solvved the problem in the Bahamas."

I said, "Oh?"

And he said, "Yes. I was told by my Bahamian counsel in the Bahamas that everything was all set and that they are going to approve the designation."

I said, "Great."

And he said, "In the meantime, I am still having problems and I don't know why there is still this difficulty. Could you make another inquiry to see what the problem is and why I am not able to fly if the Bahmaian people have now consented?"

So I said I would.

I called Mr. Dregge again and I said, I asked Mr. Dregge if I could see him in this connection, and he said certainly and I said, "This time I will come to your office."

Q Before You get into that meeting, what was Mr. Dregge?

A He was the Congressional liaison of the Civil

Aeronautics Board.

Q Tell us what a "Congressional liaison " is?

A Every administrative agency has at least one, some two or three, Congressional liaison people whose sole job is to respond to questions to the Congressmen to provide them with information, to privide them with assistance, whenever any requests come in. In other words, when we get thousands of requests for assistance, a Congressman, in addition to passing legislation, is also sort of a conduit with the people of his district and Federal --

MR. GIULIANI: Objection, your Honor. I think we are going a little far afield describing what a Congressional liaison is. We are now describing Congressmen.

THE COURT: That's correct.

Go back

Q Finish your answer.

A This Congressional liaison is an individual we contact to privide us with information with regard to any information we have that would deal with that particular agency.

Q When a constituent of yours comes to you with a problem, would it be the normal system for you to go to the Congressional liaison of the particular agency involved?

A Yes, sir.

Q Did there come a time when Mr. Dregge gave you an appointment to see him?

A Yes, sir.

Q You heard Mr. Dregge testify here, did you not?

A Yes, I did.

Q You heard him testify to a March meeting that you all had?

A Yes, I did.

Q Is that the meeting we are referring to?

A I believe it is.

Q Will you tell us who was present at that meeting, sir?

A To the best of my recollection there was Mr. Miller, Mr. Zorovich, and myself, Mr. Dregge, and a gentleman who I now know as Mr. Kinsey was present also.

Q Tell us where the meeting took place?

A In Mr. Dregge's ofice.

Q Tell us what was said by the parties during that meeting, as best as you can recall?

A We came in to see Mr. Dregge and he said, in effect --

I said that gosh, this thing, we had heard from the Bahamas that everything is all set, the Bahamian people have agreed. Could someone please tell us what the problem is now.

And Mr. Dregge said we had no independent information.

Mr. Dregge said, "Here we have no independent information that the Bahamian people are satisfied."

And I said, "Well, according to Mr. Miller, who just came back from the Bahamas, or Mr. Zorovich, or one, they are satisfied and could someone please tell us what the problem is."

We had a long conversation. Mr. Kinsey was there, and then they said they would.

That was the gist of it.

2 Q Did the meeting end with they agreeing that they would find out what the Bahamian intention was at that time?

A Yes. They said they would make an inquiry and let me know as soon as they got any further word.

Q Did you leave Mr. Dregge's office at that time with Mr. Miller and/or Mr. Zorovich?

A Yes, sir.

Q Did there come a time when you heard from Mr. Dregge again?

A Some time thereafter I received either a telephone call or a letter from Mr. Dregge telling me that we had been misinformed and that the Bahamian Government is not happy with the fact that Mr. Bernstein has disassociated himself with the Florida Atlantic Airlines, and that at the same time they were also unhappy over the fact that Florida Atlantic Airlines was also flying planes in even though the Bahamian Government had asked them not to do so.

Q I show you what has been marked as Government's Exhibit 47 in evidence. I ask you to look at that and tell us whether that is the letter you just referred to that you received from Mr. Dregge?

A (Pause.)

Yes, sir.

Q Is that it?

A That's the letter.

Q Did you make a copy of that letter and send it to Mr. Miller?

A I belive I did. I normally do so.

Q When I say "Mr. Miller," I am referring to Marty Miller.

A Yes. I assume so.

Q Thereafter, Congressman Podell, did you write a response to that letter marked Government's Exhibit 47 in evidence?

A Yes. As is the usual practice when a matter is disposed of, I sent the letter out to Mr. Dregge thanking him for his assistance and for his information, and usually this is the letter which I would hope would be in his file -- there is a file in every State Department or Federal employee -- I sent it:

Thank you very much. You are very cooperative and courteous.

Q I now show you what has been marked as Exhibit 48 in evidence. That is the letter you wrote to Mr. Dregge in response to his letter of March 21, 1969, Government's Exhibit 47 in evidence?

A Yes, it is.

Q Did you in that letter thank him for the appearances that he gave you, and did you further state:

Thank you, even though nothing could have been done for these people, in effect?

A I thanked him for his patience. I think I said his cooperation and courtesy. It is almost a standard form letter that we would send to any governmental agency that has cooperated with our request.

Q Will you read this one sentence beginning with the "While," please.

A (Reading:)

"While nothing could be done for them, your assistance, cooperation, and patience was exemplary, and I want to thank you."

Q Is it signed by you?

A "With warm regards, sincerely, Bertram M. Podell."

Q Did you send a copy of that letter to Martin Miller?

A Yes. I always send copies of correspondenc to the individual concerning whom that correspondence was directed towards.

Q Did there come a time, Mr. Podell, when you had a conversation with Mr. Miller, Mr. Zorovich, or both about the FAA?

A I don't remember the date, but it was in that time frame when Marty came to me and he said, "You know, I hear that there is a problem. My Bahamian counsel told me," and this was at the time when Marty Miller told me that the Bahamian people have now approved the airline and that there is no more objection, but that the problem is now with the FAA. He said could I make an inquiry there.

So I probably instructed Peg, or I did instruct

Peg, to contact the Congressional liaison of the FAA and ask them some information in this connection.

Q Was that Mr. Carnahan whom you saw in court?

A I assume it was. I have no recollection but I assume it was.

Q Did you know Mr. Carnahan's name before you were formerly told by the Goverhment his name?

A No, I did not recall his name?

T 2 pm

Q Did you recognize him when you saw him on the stand?

A No, I did not. I don't doubt that I have met him. I just didn't recognize him.

Q What did you find out from the congressional liaison with respect to this problem?

A They had no jurisdiction. I thanked them very much and said goodbye.

Q Did you have a conversation with Mr. Miller, Mr. Zorovich, or both, about what you had determined?

A I said it could be the Bahamian people that are misleading you, the FAA has no jurisdiction.

Q At the time you visited Mr. Kinsey and Mr. Dregge and at the time you spoke to Mr. Carnahan, were you acting as attorney for Mr. Miller or Leasing Consultants?

MR. GIULIANI: I object. His characterization would be inadmissible.

MR. LaROSSA: May it please the Court, this was the very thing that we spoke about at the side bar.

THE COURT: Read the question.

(Question read.)

THE COURT: It's a very close question, Mr. LaRossa, but I will overrule the objection provided the answer is succinct.

Q Were you acting as their attorney on any of these visits?

A No, sir.

Q Were you acting as a member of the House of Representatives on these occasions?

A Yes, sir.

Q Were you acting in behalf of a constituent at these times?

A Yes, sir.

Q Congressman, will you tell us, if you can, please, how many days on a normal week you spend in your congressional office in Washington?

A I generally leave at 8 o'clock in the morning at the Eastern air shuttle, and I am there Monday, Tuesday, Wednesday, and I get back Thursday night, depending upon things.

Q On those normal four days, sir, will you tell us, if you can, how many times you would see a congressional liaison, a constituent, legislative assistants, or any other people that would take the normal routine of a congressman from morning until evening?

b2

MR. GIULIANI: I am going to have to object. Mr. LaRossa is testifying for the witness.

THE COURT: I am afraid that is so. I had expected an objection to come sooner.

Q Will you tell us, sir, how many people you normally see a day in Washington?

A Oh, sometimes a dozen, sometimes more.

Q Will you tell us what they comprise?

A Well, they are in addition to constituents who come to visit to see the congressional session, we have representatives of various labor unions or companies who come to express a viewpoint; we have visits by liaisons from the different agencies of the federal government which have problems which we must address ourselves to every day.

Q When Congress is in session are there times when a congressman must be on the floor of the Congress in order to vote on legislation?

A Every day.

Q Will you tell us how that occurs throughout the day?

MR. LaROSSA: I am doing this for a reason. I am not doing it for background.

THE COURT: There has been no objection. I was about to object myself, but go ahead.

You may answer, Mr. Podell.

THE WITNESS: I'm sorry. I have forgotten the question.

Q Will you tell us how the voting procedures come into effect? How are you called to the floor, for example, throughout the day?

A Well, each morning we go to committee and every afternoon the session starts at 12 o'clock. We generally have a bell system. There are three bells which call for a quorum call, and then we go to the session and then we start debate on legislation. Generally if the debate does not deal with a bill with which we are personally involved or interested in by way of direct activity, we go back to our office, and then there would be bells that would ring during the course of the time to vote or for amendments. Everything works by a bell system.

Q Isn't it a fact that on occasions during a conference with someone a bell will ring and you have to leave that conference?

MR. GIULIANI: I object to the question as leading.

THE COURT: Mr. LaRossa, I am afraid that your questions are extremely leading. I don't know how sensitive this is.

MR. LaROSSA: I didn't think it was sensitive. I will be more direct and it will take more time. I was trying to show the normal activity. I am not going to get into anything more complex than that from that point. So I don't think it is a problem.

Do you want me to rephrase the question?

Q Are you called out of conference on the ringing of a bell?

A Constantly.

Q Did there come a time, Mr. Podell, when you had a conversation with Martin Miller at any time about the law firm Podell & Podell?

A I don't remember the exact date of the conversation, but it was possibly during one of the visits we had a conversation in which Mr. Miller, Marty Miller, had indicated to me his displeasure with Heiko & Bush. He said that Heiko & Bush had ruined the purchase of the airline and so on, and that he was unhappy with them, he paid them a thousand dollars a month on a retainer bais, and he would like to get new counsel, and would our firm consent to represent Leasing Consultants.

I told Marty that in view of the fact that they dealt a lot with municipal governments and there might be problems with the SEC that may involve an impropriety in the event that a congressman would be involved, I would suggest that he speak to my brother or my dad about their representing him in that firm which I was not a member.

Q Did you ever determine that that conversation took place between Mr. Miller and either your father or your brother?

A Yes. I was thereafter informed that a conversation--

MR. GIULIANI: Objection, your Honor.

THE COURT: The answer is yes.

Q Was that conversation with your brother?

A Yes.

Q Will you tell us what your brother told you?

MR. GIULIANI: Objection.

THE COURT: Objection sustained.

MR. LaROSSA: His brother's name is noted in the indictment as a co-conspirator and this is during the pendency of the conspiracy, and the same thing applies as has all the other hearsay statements that witnesses have testified to during the pendency of the alleged conspiracy.

MR. GIULIANI: Is it a statement in furtherance of the conspiracy? Is Mr. LaRossa conceding that?

MR. LaROSSA: Mr. LaRossa isn't even conceding there is a conspiracy. I think you ought to know better than that.

THE COURT: The objection is sustained.

MR. LaROSSA: Note my exception.

Q I show you what has been marked Exhibit 18, sir.

MR. LaROSSA: While that exhibit is being looked at, will your Honor allow me to make an offer of proof outside of the hearing of the jury? I don't want to interrupt the proceeding.

Q (Continuing) When is the first time you saw what is marked Exhibit 18 in evidence?

A Oh, it was, I would say, it was possibly some years later.

Q Some years later than what?

A Years after the date of the exhibit, which is April, 1969.

Q Did you have anything to do with the preparation of those bills?

A No, sir, I never prepared those in my office.

Q Did you dictate them or did you direct anyone to prepare them?

A No, sir, this had nothing to do with the firm of which I was a member.

Q Will you look at Exhibit 18 and tell me whether your name appears on the stationery used in the billing?

A Yes, it does.

Q Did you have a conversation with your brother, Herbert, after making a determination that those bills were in existence and the preparation of those bills?

A Yes, I did.

b3

Q Tell us what that conversation was.

MR. GIULIANI: Objection.

THE COURT: I think this objection has to be sustained, Mr. LaRossa.

MR. LaROSSA: These are overt acts in the conspiracy. They are listed as such.

THE COURT: I don't think he can testify as to this conversation with his brother for the reason that I have sustained the last objection.

MR. LaROSSA: Am I directed, then, I should not ask any questions concerning conversations the witness had with his brother until I have had an opportunity to make an offer of proof to the court?

THE COURT: Well I suppose so. I suppose that would be the better way to do it.

Q Do you know, sir, whether any moneys were received by the firm of Podell & Podell of which you were not a member from Leasing Consultants?

A No.

THE COURT: The answer to that is no?

THE WITNESS: May I amend the answer?

MR. LaROSSA: I assume the Court will allow you to.

THE COURT: I am just trying to find out what the answer was.

THE WITNESS: I know whether or not moneys were received.

Q I don't understand.

A You asked me do I know whether or not moneys were received, and I know whether or not moneys were received. They were not received.

Q Did you ever perform any services for Leasing Consultants with respect to this retainer agreement that you told us about a few minutes ago?

A No, sir, I had no part of that agreement.

Q Do you know whether any members of the firm of Podell & Podell exclusive of yourself did any legal work for Leasing Consultants that you know of?

A Yes, there was some work that I know that they did.

Q Will you tell us what that was.

MR. GIULIANI: Objection, your Honor. How does he know about it? If he knows about it through hearsay statements it would be getting in indirectly what he can't get in directly. Did he observe it? See it? Do it?

THE COURT: Is the question did Podell & Podell of which he is not a member ever perform any services for Leasing Consultants and does he know whether they did or not?

MR. LaROSSA: Yes.

THE COURT: I suppose we will have to find out how he knows.

Q Let me try a different way. Was there ever a time when you saw within the law firm documents, memoranda, or anything pertaining to any matter that Podell & Podell handled for Leasing Consultants within that retainer agreement?

A No, sir, I did not.

Q Is it your testimony, then --

MR. GIULIANI: Objection. It's going to be a leading question. He is summing up his testimony, and I would like to object to it before it gets before the jury.

Q How do you know that Podell & Podell performed any services for Leasing Consultants?

A My brother or my father told me.

MR. GIULIANI: Your Honor, I object and move that it be stricken. Mr. LaRossa has indirectly done what you told him not to do.

THE COURT: I think that is right. I am not positive that that is right. I want the jury to disregard the answer that was given and the question that was asked.

Q Did you during all the time that you discussed anything with Marty Miller have a conversation with Mr. Miller about any service your brother performed for Leasing Consultants?

A Yes, I did.

Q Will you tell us what he told you, if anything?

A I would imagine it was some time during one conversation after this retainer was sent when as a result of a conversation I had with somebody I asked Marty Miller, my brother had said to me --

Q I think you are not permitted to say that. After having a conversation with your brother did you say anything to Marty Miller?

A Yes,sir, I did.

Q Tell us what you said to Mr. Miller.

A I told Mr. Miller that my brother said --

Q Tell us what you told Mr. Miller.

A I told him my brother said to me that the retainer hadn't been signed, and Marty Miller told me, "Don't worry. Tell your brother when you see him that it will be." And then he said, "By the way, how is my secretary's matrimonial matter?" Or something of that kind. And I said I didn't know. He said, "She went over to see your brother last week or two weeks ago." And there was some conversation with regard to that. I don't remember her name, I don't remember what was said or what kind of matrimonial matter it was. I do remember that it was a matrimonial matter. That was one particular conversation that I had with Mr.

Marty Miller.

Q Did there come a time, sir, when you had a conversation with Mr. Miller about the country of Uruguay?

A Yes, there was.

Q Will you tell us what that conversation was?

A It was, oh, some months or weeks after during a meeting with Marty Miller. He had told me that Leasing Consultants this time has a problem, that Leasing Consultants had leased an airplane to a private company in Uruguay and the company had failed to make its payments and they tried to repossess the plane and they can't get the plane out of Uruguay, and would I please recommend an attorney to them, or "How can we get an attorney in Uruguay." I suggested, "You call the State Department and they will recommend a lawyer to you." I think he said, "Could you do that for me?" I said, "No reason why I can't. I am delighted to." And I think I asked someone in my office to call the State Department. The State Department recommended three lawyers, of which Mr. Miller or Mr. Zorovich selected one, and what happened I don't know after that.

Q Did you make that phone call to the State Department to find out a recommended list of attorneys there in your capacity as an attorney for Leasing Consultants?

A No, as a congressman,

Q Did you do so as a congressman for a constituent?

A Yes, sir.

Q Did there come a time, sir, in or about April, 1969, when you had dinner with Martin Miller and his wife, your wife, and yourself?

A We had dinner on a number of occasions together, but I recall this particular occasion very well, yes.

Q Will you tell us, if you can recall, where tha dinner took place?

A It was a restaurant here not too far from the airport. I don't remember. It was a restaurant here in New York.

Q Could you tell us what the subject of the conversation was at that dinner?

A Well, it was generally a social evening --

MR. GIULIANI: Did Mr. Podell say the name of the restaurant?

THE COURT: A restaurant here in New York. That is all I know.

MR. GIULIANI: Near the airport?

THE WITNESS: I believe it was in Queens. It was primarily a social evening. We discussed our children and we discussed the past and hopes and aspirations. And, in any event, we discussed politics, and I was just recently

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U.S. DISTRICT COURT
FILED
MAY 31 1977
12055
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------------------------------x

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- :

BERTRAM L. PODELL, :

Defendant. :

---------------------------------x

OPINION AND ORDER

76 Civ. 509

#45965

APPEARANCES:

HONORABLE ROBERT B. FISKE, JR.
United States Attorney, S.D.N.Y.
Attorney for Plaintiff
By: Richard T. McCarthy, Esq.
Asst. United States Attorney
Of Counsel

DANIEL M. SHIENTAG, ESQ.
Attorney for Defendant

KEVIN THOMAS DUFFY, D.J.

The government has moved for summary judgment in this action which seeks to recover $41,350 allegedly paid defendant, a former United States Congressman, in violation of the federal conflict of interests statute, 18 U.S.C. § 203, prohibiting a member of Congress during his incumbency to receive compensation for services rendered with respect to any matter in which the United States has a direct and substantial interest before any department or agency.[1/] It is the government's position that receipt of these monies in violation of § 203 constitutes a breach of the fiduciary duty which defendant owed the government and that defendant is thus accountable by means of a constructive trust imposed on his property to the extent of $41,350.

On October 1, 1974, defendant entered a plea of guilty to paragraphs 1 and 5 of count 1, and to count 5 of the criminal indictment in United States v. Podell, et al., 73 Cr. 675, charging him with conspiratorial and substantive violations of § 203(a). The indictment basically charged in ten counts that defendant, while a member of Congress, had appeared before the Civil Aeronautics Board ("CAB") and the Federal Aviation Administration ("FAA") on behalf of Florida Atlantic Airlines, Inc. ("FAAL") which was seeking permission from the CAB to operate a route between Florida and the Bahamas and was opposing a revocation by the FAA of its operating certificate, and had received $41,350 for these services. The specific portions of the indictment to which defendant pleaded guilty are set forth in the margin.[2/]

The government contends that the plea estops defendant from contesting his violation of § 203, and that the acts thereby admitted constitute a breach of fiduciary duty owed the United States establishing liability therefor as a matter of law. To evidence the amount of liability, the government has submitted three checks totalling $14,3[illegible]0, payable to entities through which defendant purportedly admitted he was compensated, and drawn by drawers who defendant allegedly admitted paid him for his illegal services. The government further asserts that the affirmative defense of statute of limitations raised in defendant's answer is without merit.

In opposition to the government's motion, defendant asserts that an issue of fact exists as to the acts encompassed by the plea and the amount allegedly paid. He further contests the sufficiency of the government's cause of action and, alternatively, viability of the claim in light of the statute of limitations.

Under 18 U.S.C. § 218, the United States is granted recovery rights with respect to its transfers "in relation to which there has been a final conviction for any violation of this chapter." By analogy to that section, defendant argues that the absence of a similar recovery provision for sums paid in violation of § 203 demonstrates that the government has failed to state a claim upon which relief can be granted. This contention misapprehends the theory of this action, which seeks the recovery of sums not because they were paid in violation of § 203, but, rather, because they were paid in breach of a fiduciary duty, as evidenced by a violation of § 203. The action is based on principles of equity, and not on any federal statutory authority; and despite the existence of 18 U.S.C. § 218, courts have not been reluctant to recognize and remedy the misuse of a confidential relationship with the United States by employees or officials serving inconsistent interests for their own gain. See United States v. Drumm, 329 F.2d 109 (1st Cir. 1964); United States v. Drisko, 303 F.Supp. 858 (E.D.Va. 1969). Thus, defendant's attack on the sufficiency of the government's cause of action must fail.

Defendant's contention that this action is barred by the statute of limitations is equally misplaced since it is predicated on the insufficiency of the government's claim as asserted and an anticipated amended or new complaint sounding in fraud.[3] Thus, defendant argues that under N.Y.C.P.L.R. §§ 213 and 203(f), the government would have had to bring suit within six years of the fraud or two years of its discovery, a period long expired by January 30, 1976, the date of the commencement of this action. Since fraud is neither alleged nor involved in this action, defendant's contention is wholly without merit.

Turning to the merits of the motion for summary judgment, it is initially clear that proof of a public official's violation of § 203 will establish, as a matter of law, his breach of fiduciary duty owned the United States. A public official stands in a fiduciary relationship with the United States, through those by whom he is appointed or elected. Trist v. Child, 88 U.S. (21 Wall) 411, 450 (1874). If he secretly advances interests adverse to those of the government which he serves, it is a breach of confidence and he must account to his "master" for the benefits received as a result, irrespective of consideration of fraud or damage. See United States v. Carter, 217 U.S. 286, 305-06 (1910); United States v. Drisko, supra, at 860.

Section 203 is one of several statutory conflict-of-interest prohibitions "designed to prohibit government officials from engaging in conduct that might be inimical to the best interests of the general public." United States v. Mississippi Valley Co., 364 U.S. 520, 548 (1961). A member of Congress who is secretly compensated for advocating private interests as an attorney before government agencies and departments has clearly divided loyalties; § 203 attempts to prevent the wearing of both public and private hats when both public and private interests are at stake. See United States v. Johnson, 215 F.Supp. 300, 315 (D.Md. 1963), aff'd in relevant part, 337 F.2d 180 (4th Cir. 1965); aff'd on other grounds, 383 U.S. 169 (1966). A violation of this section unquestionably demonstrates a breach of trust, for in order to fall within its prohibition, a member of Congress must shed the duty of disinterested advocacy owed the government and his constituents in favor of championing private interests potentially inconsistent with this charge.

It is settled that a criminal conviction estops a defendant in a subsequent civil case from contesting those matters on which the conviction rests, Emich Motors v. General Motors, 340 U.S. 558, 568-69 (1951); if the conviction results from a guilty plea, then the plea constitutes an admission of elements of the charge. McCarthy v. United States, 394 U.S. 459, 466 (1969). Defendant concedes that his guilty plea of October 1, 1974 constitutes an admission that he was compensated for having represented FAAL, while a member of Congress, in connection with matters pending before the CAB and FAA. As such, his plea conclusively establishes his breach of fiduciary duty to the United States, and his accountability for that breach is clear.

Once having established a breach, the inquiry shifts to a determination of the amount recoverable by the government by reason of the defendant's betrayal of trust. It is on this issue that the dispute centers. The government contends that defendant's guilty plea encompassed admissions that, for his services on behalf of FAAL, defendant had received money from Martin Miller, Kenneth Burstine and Michael Zorovich in the form of payments to the Citizen's Committee for the Reelection of Bertram L. Podell and fees to the law firm of Podell & Podell; and that at his allocution, defendant admitted that he was paid through Leasing Consultants, Incorporated ("LCT"). Consequently, the government argues that the three copies of cashed and deposited checks submitted -- two dated January 7, 1969 and March 13, 1969, drawn on the account of LSI, and payable to Podell & Podell for $12,350, and one dated May 1, 1969, drawn on the account of Martin Miller, and payable to "Citizens Committee for B. L. Podell" in the amount of $29,000 -- evidence the amount received by defendant for which he is accountable.

In an attempt to raise an issue of fact as to the amount of compensation, defendant argues that his plea covered only his general concession of liability referred to above, and did not extend to the amount received, or the source and means of the payments. In so contending, he relies on the following portion of plea allocution:

THE COURT: *** What I would like to hear from you, tell me in your own words what it is you did in respect to the counts you are pleading guilty to so I can be satisfied that you are, in fact, guilty.

DEFENDANT PODELL: If the Court pleases, while a member of Congress and acting as a lawyer for Florida Atlantic Airlines and paid by Leasing Consultants, Inc., I appeared before various Federal agencies, including the CAB, the FAA, and advocated the interests of the said Florida Atlantic Airlines.

I was indirectly compensated through my law firm for these appearances before the CAB and the FAA while a member of Congress.

I did not at the time know that I was violating any law, but I intended to do what I did.

THE COURT: I will accept the plea.

MR. LaROSSA: I think Mr. Giuliani's statement should be read in conjunction with your acceptance of the plea, your Honor. It defines the limits.

MR. GIULIANI: Your Honor, the government is agreeable to taking the plea to count 1, the conspiracy count, and count 5, the conflict of interest count.

It is the government's view that a plea to count 1 encompassing paragraphs 1 and 5B and C, and to count 5, satisfies the interests of justice in this case.

It is the government's position that the plea to the conspiracy count admits that the object of this conspiracy was to violate the conflict of interest law and thereby to defraud the United States.

The government also understands that the defendant is not in any way admitting the bribery objects of the conspiracy. He is admitting the conflict of interest and the defrauding to the extent that it is meant by "conflict of interest."

In defendant's view, his plea to the conspiracy charge like "a general verdict of guilty . . . does not determine which of the particular means charged in the indictment were used to effectuate [the] conspiracy," United States v. Warner, 211 F.2d 669, 672 (7th Cir. 1954), and since the substantive count -- count 5 -- to which he also pleaded guilty was silent on the source and means of compensation, he cannot be deemed to have admitted the same; as a result, an issue of fact remains as to the amount received.

Overlooked by defendant's argument is the fact that defendant did not plead guilty to a general count of conspiracy; rather, his plea of guilty was directed at specific and carefully delineated portions of the conspiracy charge of the indictment, namely, paragraphs 1 and 5(b) and (c) of count 1, with certain deletions. That defendant knew this to be the case is evidenced by his acknowledgment in his allocution:

> THE COURT: ***
>
> Mr. LaRossa, your counsel, has indicated that you are pleading guilty to certain counts of the indictment with certain deletions. I want to know whether that is, in fact, true, whether you are in fact doing that.
>
> DEFENDANT PODELL: Yes, I am.

Thus, defendant's plea constitutes an admission of the contents of those counts, including the source and means of his compensation.

Defendant has attested that Podell & Podell received under a retainer agreement with LCI a payment of $10,000 in connection with a trip by defendant to Freeport, Bahamas, in December 1968; a payment of $1,000 for his trip to Nassau in February 1969; and a payment of $1,350 for his father's trip to Puerto Rico in the same month. However, defendant claims that such payments were unrelated to his activities on behalf of FAAL. In light of defendant's clear admissions that he was paid by LCI through his law firm, and that among the means used to carry out his activities were trips by defendant to the Bahamas, it is clear as a matter of law that defendant is accountable for at least $11,000 of the sum so received.[4]

Defendant's affidavit is silent with respect to the check for $29,000 from Miller, and although his attorney claims that an issue of fact exists with respect to the payment of this sum (Defendant's 9(g) statement, ¶¶ 2, 3, 4), defendant has not come forward with any proof, much less a contention, explaining this payment. Since defendant has admitted that he was compensated from Miller in the form of payments to the Citizen's Committee for the Reelection of Bertram L. Podell, the conclusion is inescapable that the

$29,000 check represents compensation for his services in breach of his fiduciary duty.

Accordingly, the government's motion for summary judgment is granted in the amount of $40,000 (being the amount sought by the government less the $1,350 referred to in footnote 4 supra).

IT IS SO ORDERED.

U. S. D. J.

Dated: New York, New York
May 5, 1977.

FOOTNOTES

1/ 18 U.S.C. § 203 provides in pertinent part:

> (a) Whoever . . . directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another --
>
> (1) at a time when he is a Member of Congress. . .
>
> in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, courtmartial, officer, or any civil, military, or naval commission . . .
>
> Shall be fined not more than $10,000 or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

2/ COUNT ONE

> 1. From in or about March 1968, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, BERTRAM L. PODELL . . . and MARTIN MILLER, the defendants, and Kenneth G. Burnstine, and Michael Zorovich, named as co-conspirators but not as defendants, did combine, conspire, confederate and agree together and with each other and with other persons to the Grand Jury known and unknown, to violate Section . . . 203 of Title 18, United States Code and to defraud the United States and its departments, agencies and branches by obstructing, hindering and impairing said departments, agencies and branches in connection with the performance of their lawful governmental functions,

(cont.)

FOOTNOTES, Cont.

2/ Cont. including; the lawful governmental functions of the United States Congress and the legitimate representation by its Members of the interests of the United States and their constituents; the lawful governmental functions of the Civil Aeronautics Board (CAB), the Federal Aviation Administration (FAA) . . . in considering and approving routes for international air travel; the lawful governmental functions of the FAA in its determinations as to revocations of operating certificates . . .

* * *

5. Among the means by which the defendants and their co-conspirators would and did carry out the unlawful purposes set forth above, were the following:

* * *

(b) The defendant BERTRAM L. PODELL would and did, travel to the Bahama Islands to speak to United States and Bahamian officials, and send letters and make telephone calls to, and attend meetings with, officers and employees of the United States and of agencies and departments thereof, including the CAB, the FAA . . . for the purpose of affecting, inducing, and pressuring said officials, officers and employees on behalf of FAAL.

(c) The defendant MARTIN MILLER and co-conspirators Kenneth G. Burnstine and Michael Zorovich would and did offer, and would and did directly and indirectly pay and caused to be paid, money and other things of value to the defendant, . . . BERTRAM L. PODELL . . . and others, in the form of payments to the Citizen's Committee for the Reelection of Bertram L. Podell and in the form of fees to the law firm of Podell & Podell, and the defendant . . . BERTRAM L. PODELL . . . would and did agree to receive and did receive money and other things of value in return for the services described in paragraphs 5(a) and (b) of this count.

(cont.)

FOOTNOTES, Cont.

* * *

2/ Cont.

COUNT FIVE

The Grand Jury further charges:

> From in or about December, 1968 up to and including September 24, 1970, in the Southern District of New York, BERTRAM L. PODELL a Member of Congress . . . the defendant . . . unlawfully, wilfully and knowingly otherwise than as provided by law for the proper discharge of official duties, directly and indirectly did receive and agree to receive, ask, demand, solicit, and seek compensation for services rendered and to be rendered by the defendant BERTRAM L. PODELL and others in relation to proceedings, applications, requests for rulings and other determinations, controversies and other particular matters in which the United States was a party and had a direct and substantial interest, before departments, agencies and officers of the United States, namely, an application by FAAL for a route designation then pending before the CAB . . . and a proceeding for suspension and revocation of FAAL's operating certificate then pending before the FAA and the National Air Transportation Safety Board.

3/ The government, anticipating the statute of limitations to be invoked by defendant, has argued the inapplicability of 28 U.S.C. § 2415(a), barring actions by the United States for money damages based on express or implied contracts if commenced after six years from the accrual of the cause of action. However, defendant does not contend that this section applies; nor has he addressed the government's argument on its applicability in his papers in opposition to the motion. Consequently, I need not reach the question.

FOOTNOTES, Cont.

4/ There is nothing before me to indicate, as a matter of law, that the $1,350 paid in connection with Podell's father's trip to Puerto Rico was compensation for defendant's activities on behalf of FAAL.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA, :

Plaintiff, : NOTICE OF APPEAL

- against - : 76 Civ. 509

BERTRAM L. PODELL, :

Defendant. :

- X

SIR:

PLEASE TAKE NOTICE, that the defendant, BERTRAM L. PODELL, above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order of the Honorable Kevin Thomas Duffy, dated May 31, 1977, which Order granted plaintiff motion for summary judgment, and defendant appeals from each and every part of said Order as well as the whole thereof.

YOURS, ETC.,

Daniel M. Shientag

DANIEL M. SHIENTAG
Attorney for Defendant
Office and Post Office Address
160 Broadway
New York, New York 10038
Tel. (212) 267-0363

TO:

CLERK OF THE UNITED
STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
HONORABLE ROBERT B. FISKE, JR.,
United States Attorney, S.D.N.Y.
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA, :

Plaintiff, :

- against - :

BERTRAM L. PODELL, :

Defendant. :

- X

NOTICE OF MOTION

76 Civ. 509 (KTD)

SIR:

PLEASE TAKE NOTICE, that upon the Affidavit of DANIEL M. SHIENTAG, ESQ., sworn to the 24th day of June, 1977, the Affidavit of JAMES M. LaROSSA, sworn to the 20th day of June, 1977, and the Opinion dated May 31, 1977, and the pleadings and proceedings heretofore had herein, the undersigned will move this Court before the Honorable Kevin T. Duffy, United States Courthouse, Courtroom 36, Foley Square, New York, New York, at 2:15 P.M., on Tuesday, July 12, 1977, or as soon thereafter as counsel can be heard:

1. For an order granting defendant reargument of plaintiff's motion for summary judgment and, upon such reargument, if granted, for an order denying plaintiff's motion upon the ground that the Court's de-

cision herein was based upon a misapprehension and mistake as to controlling facts, law and evidence before the Court or, alternatively,

2. In the interest of justice, reopening the motion for the purpose of considering further and additional proof as to controlling facts and evidence and based thereon for an order denying plaintiff's motion for summary judgment, and

3. Such other and further and different relief as the Court may deem just and proper in the circumstances.

Dated: New York, New York
June 24, 1977.

DANIEL M. SHIENTAG
Attorney for Defendant
Office and Post Office Address
160 Broadway
New York, New York 10038
Tel. (212) 267-0363

TO:

ROBERT B. FISKE, Jr.
United States Attorney for the
Southern District of New York
Office and Post Office Address
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
Tel. (212) 791-0055

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

UNITED STATES OF AMERICA, :

:

Plaintiff,

: AFFIDAVIT

- against -

: 76 Civ. 509 (KTD)

BERTRAM L. PODELL,

:

Defendant. :

- X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DANIEL M. SHIENTAG, being duly sworn, deposes and says: I am the attorney for the defendant, BERTRAM L. PODELL, in the above matter and am fully familiar with all the facts and circumstances hereinafter set forth.

1. This affidavit is submitted by me in support of an application by the defendant; (a) for leave to reargue plaintiff's motion for summary judgment which was granted by this Court on May 31, 1977 or, alternatively, (b) to reopen the motion for the purpose of receiving and considering additional proofs, in the interest of justice and, based thereon for an order denying said motion.

2. Insofar as this application is based upon misapprehension and errors of fact and law, these matters will be treated in the memorandum submitted herewith.

3. This affidavit is submitted solely for the purpose of bringing to the attention of the Court certain facts which although matters of public record, do not appear to have been considered by the Court in this decision.

4. Firstly, prior to the institution of this action, the Trustee in Bankruptcy for LEASING CONSULTANTS INCORPORATED brought an action in the Eastern District Court of New York, (70-B-656) to recover the identical payments referred to on page 10 of the Court's Opinion herein, to wit:

> "$10,000 in connection with a trip by defendant, to Freeport, Bahamas, on December 6, 1968; a payment of $1,000 for his trip to Nassau, in February, 1969; and a payment of $1,350. for his father's trip to Puerto Rico in the same month, totalling $12,350."

While this motion was pending, the Bankruptcy Judge, William J. Rudin, awarded the Trustee a judgment in that amount and for those items.

5. That matter is now on appeal to the Eastern District Court of New York, and a hearing thereon has been scheduled for August 5, 1977, for Judge Jack B. Weinstein.

6. Patently, it would be unfair and inequitable to require the defendant to pay twice.

7. The plaintiff's application herein is one for an accounting based upon an alleged fiduciary relationship then, even if the basic premise of defendant's liability is upheld, he should not be required to account or to pay more than once.

8. Secondly, at the time of the submission of plaintiff's motion for summary judgment, it appeared clear that plaintiff had submitted no proof whatsoever to connect any of the payments (or checks) attached to the plaintiff's 9(g) statement, as Exhibits D, E and F, with any of the allegations, statements or facts contained in either defendant's allocution or the portion of Count 1 and Count 5 of the Indictment to which defendant's plea was entered.

9. It is submitted, and will be argued in the Memorandum of Law, that the burden was upon plaintiff to establish the connection between these facts and the identity of the payments encompassed within the pleading.

10. It must be kept in mind that defendant's plea was negotiated and its effects cannot go beyond the bargain whichthe parties made.

11. The Government made no attempt to establish the parameters of the agreement which the plea bargaining resulted in nor to establish what was and what was not included.

12. In light of the foregoing and in view of defendant's specific denial of any admission beyond that contained in his allocution, any further statement on the subject seemed inappropriate. The Court, however, clearly has imposed a burden on the defendant to "explain" Mr. Miller's campaign contribution rather than to impose a burden on the plaintiff to connect it with defendant's alleged admission. Defendant should at least be given an opportunity to do this upon a trial.

13. Defendant contends the payment was what he and Mr. Miller repeatedly said it was: a campaign contribution, nothing more. The Government has offered no contrary proof.

14. The Affidavit of JAMES M. LaROSSA who represented Mr. Podell in the negotiations which resulted in the plea, unequivocally removes the $29,000.00 contribution from the purview of the admission and the bargain Mr. Podell made.

15. Mr. LaRossa's Affidavit further specifically delineates the parameters of the agreement which he reached

with the Government as to the limits of defendant's admissions, to wit; the prepared allocution.

16. Summarizing defendant's contentions upon this application, the Court's decision should be withdrawn, reargument should be granted, reconsideration given to the motion and, thereupon, based upon the misapprehension of facts and errors as to law as set forth herein and in the Memorandum of Law accompanying these papers, the motion should be denied or, alternatively, the matter should be reopened for the purpose of giving consideration to the matters brought forth herein which were not taken into account by the Court in rendering it's original decision. Namely:

(a) The claims of the Trustee in Bankruptcy of LEASING CONSULTANTS INCORPORATED and United States Government's conflict which cover the same items, and whether, if either of these entities is entitled to a recovery, their respective claims should be resolved in a single proceeding or as part of an accounting, and

(b) Whether the plaintiff should be required to carry the burden of proof as to the identity of the items and amounts which were contained within the terms of the plea for which it and the defendant bargained and the agreement which they ultimately made.

17. It is not sufficient to say that these items were mentioned in the indictment or in the course of the trial. Many things were alleged in the indictment or testified to in the course of the trial and most of which had no relationship whatsoever to the plea bargaining.

18. Where, as here, a party seeks to incorporate a specific fact into a general statement in a bargained plea, it is incumbent, indeed, essential upon that party, to prove the terms of the agreement under which the plea was made.

WHEREFORE, it is respectfully requested that the relief set forth in defendant's Notice of Motion be granted, and that defendant be granted such additional relief as the Court may deem proper in the circumstances.

DANIEL M. SHIENTAG

Sworn to before me this
24th day of June, 1977.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA :

:

v. : AFFIDAVIT

: 76 Civ. 509 (KTD)

BERTRAM L. PODELL, :

:

Defendant.

:

- x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JAMES M. LaROSSA, being duly sworn, deposes and says:

1. I am an attorney admitted to practice in the State of New York, and maintain my offices at 522 Fifth Avenue, New York City.

2. I represented BERTRAM L. PODELL in the case of UNITED STATES v. PODELL, 73 Cr. 675 and, in particular, represented him in connection with the negotiations and discussions with United States Attorney's office for the Southern District of New York, which resulted in the entry of a plea of guilty to portions of Count 1 and Count 5 of the Indictment therein on October 1, 1974.

3. The negotiations covered many hours. There were portions of the conspiracy count (Count 1) that both

the Government and the defense agreed had not been proved. It was agreed that those portions would be stricken. There were other portions of the conspiracy count which the Government would not agree to eliminate but nevertheless, for which the defendant did not admit either responsibility or that the acts constituted part of the alleged crime.

In order to resolve the conflict, and with the permission of the Court, an agreement was reached to limit the plea by means of the allocution to those portions of the crime alleged in Count 1 as to which the defendant assumed responsibility.

Therefore, the Chief Prosecutor, Mr. Giuliani, and I, worked out a prepared statement for Mr. Podell to read upon his allocution and Judge Carter was informed of what the statement was going to be before the plea.

Mr. Podell then, as his allocution, read the statement which had been agreed to by all parties.

4. It was my understanding then, and it is my understanding now, that pursuant to Rule 11 of the Federal Rules of Criminal Procedure, under the circumstances described herein, the defendant can only be held accountable for the matters described in the allocution and that the allocution must necessarily cover the four corners of the charge pleaded to.

5. I gave this opinion to Mr. Podell at the time of the plea and I advised him and he understood that what he was admitting and pleading to were the facts contained in the prepared allocution which he read to the Court.

6. At no time did Mr. Podell admit or agree to plead guilty to having received the $29,000.00 contribution to the Campaign Committee as compensation in violation of the Conflict of Interest law. There was, of course, no question of the payment itself, but there was a very substantial dispute that the contribution was part of a conspiracy to violate a law and, consequently, it was eliminated from the allocution.

JAMES M. LaROSSA

Sworn to before me this
2d day of June, 1977.

D[illegible]
NOTARY PUBLIC STATE OF NEW YORK
No. [illegible]
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES MARCH 30 1979

ENDORSEMENT

United States v. Podell 76 Civ 509

JUL 28 1977

On May 31, 1977 I granted the government's motion for summary judgment against defendant Podell, finding, in my opinion and order, that he had breached a fiduciary duty ultimately owed to the government, for which he had to disgorge $40,000 received thereby in profit. Of this $40,000, $11,000 represented payments received by Podell from Leasing Consultants, Inc. (LCI).

Defendant has now moved to reargue or reopen the summary judgment motion. Of his various contentions, only one necessitates comment. Defendant has now called my attention to proceedings in the Eastern District of New York, in which Bankruptcy Judge Rudin awarded the Trustee in Bankruptcy for LCI a judgment against the law firm of Podell & Podell for $12,350, representing the return of illegal payments made by LCI. Of this award, $11,000 appears to be the subject matter of my May 31, 1977 order, as well. Bankruptcy Judge Rudin's award is presently on appeal.

The fact of these proceedings were never made known to me by the parties, particularly defendant and his counsel, who now appears incredulous that "although [a] matte[r] of public record" these proceedings did not "appear to have been considered" by me. (Shientag Aff. ¶3). What appears incredible to me is that defendant's counsel merely represents that the LCI Trustee was awarded judgment during the pendency of the motion before this Court, while ignoring the fact that Bankruptcy Judge Rudin's opinion on the award was dated March 25, 1977-- eleven days prior to defendant's filing any papers in opposition to the summary judgment motion. It would thus appear that plaintiff and/or his counsel deemed that award to be irrelevant to my consideration of the summary judgment motion at that time. Instead, more than 30 days after the rendering of my opinion and order, during the pendency of the appeal from Bankruptcy Judge Rudin's award to another court, this matter is suddenly deemed crucial to my determination. Yet defendant has not even attempted to explain the basis for his present supposition. His counsel merely points out that "[p]atently, it would be unfair and inequitable to require the defendant to pay twice." (Shientag Aff. ¶6). However, Bankruptcy Judge Rudin's award presently lacks finality; defendant might never be the subject of conflicting judgments. In any event, defendant is free to raise his argument on appeal in the Eastern District.

The within motion to reargue has been granted. Upon reconsideration, I adhere to my original decision.

IT IS SO ORDERED.

Kevin Thomas Duffy

U.S.D.J.

New York, New York
July 28, 1977

U. S. DISTRICT COURT
FILED
SEP 21 1977
S. D. OF N. Y.

21

77-6107

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, :

Plaintiff, :

- against - :

BERTRAM L. PODELL, :

Defendant. :

- x

AMENDED
NOTICE OF APPEAL

76 Civ. 509 (KTD)

UNITED STATES COURT OF APPEALS
FILED
SEP 26 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

SIR:

PLEASE TAKE NOTICE, that the defendant, BERTRAM L. PODELL, above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment entered on the docket August 16, 1977, in favor of plaintiff and against defendant in the amount of $40,000, and defendant appeals from each and every part of said Judgment as well as the whole thereof.

YOURS, ETC.,

DANIEL M. SHIENTAG
Attorney for Defendant
Office and Post Office Address
160 Broadway
New York, New York 10038
Tel. (212) 267-0363

TO:

CLERK OF THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HONORABLE ROBERT B. FISKE, JR.
United States Attorney, S.D.N.Y.
Attorney for Plaintiff
One St. Andrews Plaza
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA, :

Plaintiff, : **AFFIDAVIT**

- against - : 76 Civ. 509 (KTD)

BERTRAM L. PODELL, :

Defendant. :
- - - - - - - - - - - - - - - - - - - x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

RICHARD J. McCARTHY, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York. As such I am the Assistant United States Attorney who, together with the United States Attorney, Robert B. Fiske, Jr., is responsible for the above-referenced action. I make this affidavit in support of the Notice of Settlement and proposed Judgment filed herewith.

2. The above-captioned action seeks a money judgment accounting through the imposition of a constructive trust upon all monies, profits, and proceeds received by the defendant in breach of his fiduciary duties as a United States Congressman, namely Forty One Thousand Three Hundred Fifty Dollars ($41,350.00).

3. By Opinion and Order filed on May 31, 1977, this Court granted the United States motion for summary judgment to the extent of Forty Thousand Dollars ($40,000.00). Said Opinion and Order stated with respect to the remaining

One Thousand Three Hundred Fifty Dollars ($1,350.00) in damages sought by the United States that there was nothing before the Court to indicate, as a matter of law, that said amount was compensation for defendant's activities on behalf of Florida Atlantic Airlines. Accordingly, summary judgment for said sum of One Thousand Three Hundred Fifty Dollars ($1,350.00) was denied.

4. On June 30, 1977, defendant filed with the Clerk of the United States District Court a Notice of Appeal from the Opinion and Order entered May 31, 1977. Said Notice of Appeal was withdrawn by Stipulation of the parties so ordered by the United States Court of Appeals for the Second Circuit on July 27, 1977.

5. In order that a final judgment may be entered in the above-captioned action the United States of America hereby waives any rights it may have in the above-captioned action to an accounting in excess of the sum of Forty Thousand Dollars ($40,000.00) awarded by the Court in its Opinion and Order entered on May 31, 1977.

S/

RICHARD J. McCARTHY
Assistant United States Attorney

Signed and sworn to before
me this 3rd day of August, 1977

/S/

NOTARY PUBLIC

LAWRENCE MASON
Notary Public, State of New York
No. 03-2572500
Qualified in Bronx County
Commission Expires March 30, 1979

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

307A U.S. District Court
Filed 8-16-77

- x

UNITED STATES OF AMERICA, :

Plaintiff, : **JUDGMENT**

- against - : 76 Civ. 509 (KTD)

BERTRAM L. PODELL, : # 78,021

Defendant. :

- x

Plaintiff having moved the Court pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the said motion having come on to be heard before the Honorable Kevin T. Duffy, United States District Judge, and the Court thereafter on May 31, 1977, having entered its Opinion and Order granting said motion to the extent of Forty Thousand Dollars ($40,000.00), and plaintiff having waived by Affidavit its prayer for an additional One Thousand Three Hundred Fifty Dollars ($1,350.00) in relief, it is hereby

ORDERED, ADJUDGED, AND DECREED: That plaintiff United States of America have judgment against defendant Bertram L. Podell in the sum of Forty Thousand ($40,000.00) Dollars, with interest thereon at the rate of 6 per cent per annum as provided by law, and its costs of action., to be TAXED.

Dated: New York, New York

August 10, 1977

ROB[illegible]
NOV 21 197[illegible]

Kevin T. Duffy
CLERK
U.S.D.J.